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JOHN MARSHALL.[1]

THE celebration in which it is our privilege to-day to participate is in the main without example. The deeds of warriors, performed in times of great public excitement, produce by their immediate effects a profound impression on the popular imagination, and are commemorated in song and in story. The achievements of statesmen, wrought out in the tumult of public discussion, and often in the midst of armed conflict, lay hold on the general understanding and win immediate renown. But in the event which we are met to commemorate all these accessories were lacking. When, a hundred years ago, John Marshall assumed the office of Chief Justice of the United States, his advent was not acclaimed, nor was there anything in the time or the occasion that seemed to invest it with peculiar significance. Of his three predecessors, Jay, Rutledge and Ellsworth, the second, Rutledge, after sitting one term under a recess appointment, retired in consequence of his rejection by the Senate; and neither Jay nor Ellsworth, though both were men of high capacity, had found in their judicial station, the future importance of which was unforeseen, an opportunity for the full display of their powers, either of mind or of office. The coming of Marshall to the seat of justice marks the beginning of

[1] An address delivered before the Delaware Bar, at Wilmington, February 4, 1901.

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an era which is not yet ended, and which must endure so long as our system of government retains the essential features with which it was originally endowed. With him really began the process, peculiar to our American system, of the development of constitutional law by means of judicial decisions, based upon the provisions of a fundamental written instrument and designed for its exposition and enforcement. By the masterful exercise of this momentous jurisdiction, he profoundly affected the course of the national life and won the proud title of the Expounder of the Constitution of the United States. This great achievement has given him, as a judge, an exceptional place in the knowledge and the affections of the American people, so that his memory, though it yet remains in a special sense the treasure of the legal profession, is celebrated in the schools of the land and honored in the halls of legislation.

But while this particular achievement has not only caused Marshall to stand preëminent among judges, like Webster among statesmen, as the Expounder of the Constitution, but has also brought him within the range of popular appreciation, yet it is not on this foundation alone that his fame as a jurist rests. In other departments of the law to which the jurisdiction of the supreme court extends, and especially in the department of the law of nations, he spread the rays of his illuminative genius. It was no mere spirit of encomium, but the spontaneous homage of a great advocate, who was not obliged by reason of any deficiencies of his own to withhold from any man a tribute of admiration, that led William Pinkney on a certain occasion to exclaim: "He was born to be the chief justice of any country in which he lived."

When John Marshall became Chief Justice of the United States, he was in his forty-sixth year. He was born September 24, 1755, in Fauquier County, Virginia, at a small village then called Germantown, but now known as Midland, a station on the Southern Railway. His grandfather, John Marshall, the first of the family of whom there appears to be any record, was an emigrant from Wales. He left four sons,

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the eldest of whom was Thomas Marshall, the father of the Chief Justice. Thomas Marshall, though a man of meagre early education, possessed great natural gifts, and rendered honorable and useful public service both as a member of the Virginia legislature and as a soldier in the Revolutionary War, in which he rose to the rank of colonel. His son, John Marshall, was the eldest of fifteen children. Of his mother, whose maiden name was Keith, little is known; but it has been well observed that, as she reared her fifteen children — seven sons and eight daughters — all to mature years, she could have had little opportunity to make any other record for herself, and could hardly have made a better one.

Subsequently to his birth, Marshall's parents removed to an estate called Oak Hill,[1] in Fauquier County. It was here that, in 1775, when nineteen years of age, he heard the call of his country and entered the patriot army as a lieutenant. He took part in the battles of Great Bridge, Iron Hill and Brandywine. He was also present at Monmouth, at Powles Hook and at the capture of Stony Point. He endured the winter's sufferings at Valley Forge. In the course of his military service he often acted as judge advocate; and he made the acquaintance of Washington and Hamilton, with both of whom he contracted a lasting friendship.

In 1780 John Marshall was admitted to the bar, and after another term of service in the army he began in 1781 the practice of the law in Fauquier County. His professional attainments must then have been comparatively limited. His education in letters he had derived solely from his father, who was fond of literature and possessed some of the writings of the English masters, and from two gentlemen of classical learning, whose tuition he enjoyed for a period of only two years. His legal education he gained from a brief course of lectures by Chancellor Wythe, at William and Mary

[1] This estate remained in the family of Chief Justice Marshall for many years after his death, but it is now in other hands. The house in which he lived — a small brick structure — forms a mere appendage of the dwelling, built by one of his descendants, which stands on the estate to-day. The present proprietor is a prosperous breeder of blooded horses and gamecocks.

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College, and from such reading as he was able to indulge in during his military service. And yet, removing to Richmond about 1783, he almost immediately rose to professional eminence.

> This extraordinary man [said William Wirt], without the aid of fancy, without the advantages of person, voice, attitude, gesture, or any of the ornaments of an orator, deserves to be considered as one of the most eloquent men in the world, if eloquence may be said to consist of the power of seizing the attention with irresistible force, and never permitting it to elude the grasp until the hearer has received the conviction which the speaker intends. . . . He possesses one original and almost superhuman faculty — the faculty of developing a subject by a single glance of his mind, and detecting at once the very point on which every controversy depends.

From 1782 to 1795, Marshall was repeatedly elected to the state legislature, the last time without his knowledge and against his wishes; and he also served one term as a member of the executive council; but, as his residence was for the most part at Richmond, his public service did not seriously interrupt his career at the bar. His experience in state politics, however, served to deepen his conviction of the need of an efficient and well-organized national government and of restrictions on the power of the states. In the formulation of the Constitution of the United States he had no hand; he was not a member of the convention by which it was framed; but, when it was submitted to the several states for their action, he became a determined advocate of its adoption and, as a member of the Virginia convention called to act upon that question, supported it against the attacks of such men as Henry, Mason, Grayson and Monroe.

After the organization of the national government, Marshall consistently supported the measures of Washington's administration, including the Jay treaty, and became a leader of the Federalist party, which, in spite of Washington's great personal hold on the people, was in a minority in Virginia. But he did not covet public office. He declined the position of attorney-general of the United States, which was offered to

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him by Washington, as well as the mission to France, as successor to Monroe. In 1797, however, at the special solicitation of President Adams, he accepted the post of envoy extraordinary and minister plenipotentiary to France, being associated in the mission with Charles Cotesworth Pinckney, of South Carolina, and Elbridge Gerry, of Massachusetts.

Few diplomatic enterprises have had so strange a history. When the plenipotentiaries arrived in Paris, the Directory was in the height of its power and Talleyrand was its minister of foreign affairs. He at first received the plenipotentiaries unofficially, but afterwards intimated to them, through his private secretary, that they could not have a public audience of the Directory till their negotiations were concluded. Meanwhile, they were waited upon by various persons, who represented that, in order to effect a settlement of the differences between the two countries, it would be necessary to place a sum of money at the disposal of Talleyrand, as a *douceur* for the ministers (except Merlin, the minister of justice, who was already making enough from the condemnation of vessels), and also to make a loan of money to the government. The plenipotentiaries, though they at first repulsed these suggestions, at length offered to send one of their number to America, to consult the government on the subject of a loan, provided that the Directory would in the mean time suspend proceedings against captured American vessels. This offer was not accepted ; and the plenipotentiaries, after further conference with the French intermediaries, stated that they considered it degrading to their country to carry on further indirect intercourse, and that they had determined to receive no further propositions unless the persons who bore them had authority to treat. In April, 1798, after spending in the French capital six months, during which they had with Talleyrand two unofficial interviews and exchanged with him an ineffectual correspondence, Pinckney and Marshall left Paris. Marshall was the first to return to the United States. On his arrival, he was greeted with remarkable demonstrations of respect and approval ; for, although his mission was unsuccessful, he had

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powerfully assisted in maintaining a firm and dignified position in the negotiations.

On his return to the United States, Marshall resumed the practice of his profession; but soon afterwards, at the earnest entreaty of Washington, he became a candidate for Congress, declining for that purpose an appointment to the Supreme Court of the United States, as successor to Mr. Justice Wilson. He was elected after an exciting canvass, and in December, 1799, took his seat. He immediately assumed a leading place among the supporters of the administration, though on one occasion he exhibited his independence of mere party discipline by voting to repeal the obnoxious second section of the Sedition Law. But, of all the acts by which his course in Congress was distinguished, the most important was his defense of the administration, in the case of Jonathan Robbins, *alias* Thomas Nash. By the twenty-seventh article of the Jay treaty it was provided that fugitives from justice should be delivered up for the offense of murder or of forgery. Under this stipulation, Robbins, *alias* Nash, was charged with the commission of the crime of murder on board a British privateer on the high seas. He was arrested on a warrant issued upon the affidavit of the British consul at Charleston, South Carolina. After his arrest, an application was made to Judge Bee, sitting in the United States circuit court at Charleston, for a writ of *habeas corpus*. While Robbins was in custody, the President of the United States, John Adams, addressed a note to Judge Bee, requesting and advising him, if it should appear that the evidence warranted it, to deliver the prisoner up to the representatives of the British government. The examination was held by Judge Bee, and Robbins was duly surrendered. It is an illustration of the vicissitudes of politics that, on the strength of this incident, the cry was raised that the President had caused the delivery up of an American citizen who had been impressed into the British service. For this charge there was no ground whatever, but it was made to serve the purposes of the day and was one of the causes of the popular antagonism to the administration of John Adams. When Congress met in

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December, 1799, a resolution was offered by Mr. Livingston, of New York, severely condemning the course of the administration. Its action was defended in the House of Representatives by Marshall, on two grounds: First, that the case was one clearly within the provisions of the treaty; and, second, that, no act having been passed by Congress for the execution of the treaty, it was incumbent upon the President to carry it into effect by such means as happened to be within his power. The speech which Marshall delivered on that occasion is said to have been the only one that he ever revised for publication. It "at once placed him," as Mr. Justice Story has well said, "in the front rank of constitutional statesmen, silenced opposition, and settled forever the points of national law upon which the controversy hinged." So convincing was it that Mr. Gallatin, who had been requested by Mr. Livingston to reply, declined to make the attempt, declaring the argument to be unanswerable.

In May, 1800, on the reorganization of President Adams's cabinet, Marshall unexpectedly received the appointment of secretary of war. He declined it; but, the office of secretary of state also having become vacant, he accepted that position, which he held till the 4th of the following March. Of his term as secretary of state, which lasted less than ten months, little has been said; nor was it distinguished by any event of unusual importance, save the conclusion of the convention with France of September 30, 1800, the negotiation of which, at Paris, was already in progress, under instructions given by his predecessor, when he entered the department of state. The war between France and Great Britain, growing out of the French Revolution, was still going on. The questions with which he was required to deal were not new; and, while he exhibited in the discussion of them his usual strength and lucidity of argument, he had little opportunity to display a capacity for negotiation. Only a few of his state papers have been printed, nor are those that have not been published of special importance. He gave instructions to our minister to Great Britain in relation to commercial restrictions, impressments

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and orders in council violative of the law of nations; to our minister to France, in regard to the violations of neutral rights perpetrated by that government; and to our minister to Spain, concerning infractions of international law committed, chiefly by French authorities, within the Spanish jurisdiction. Of these various state papers, the most notable was that which he addressed on September 20, 1800, to Rufus King, then United States minister at London. Reviewing, in this instruction, the policy which his government had pursued, and to which it still adhered, in the conflict between the European powers, he said:

> The United States do not hold themselves in any degree responsible to France or to Britain for their negotiations with the one or the other of these powers; but they are ready to make amicable and reasonable explanations with either. . . . It has been the object of the American government, from the commencement of the present war, to preserve between the belligerent powers an exact neutrality. . . . The aggressions, sometimes of one and sometimes of another belligerent power, have forced us to contemplate and prepare for war as a probable event. We have repelled, and we will continue to repel, injuries not doubtful in their nature, and hostilities not to be misunderstood. But this is a situation of necessity, not of choice. It is one in which we are placed, not by our own acts, but by the acts of others, and which we [shall] change so soon as the conduct of others will permit us to change it.

For a month Marshall held both the office of secretary of state and that of chief justice; but at the close of John Adams's administration he devoted himself exclusively to his judicial duties, never performing thereafter any other public service, save that late in life he acted as a member of the convention to revise the constitution of Virginia. It is an interesting fact that, prior to his appointment as chief justice, Marshall had appeared only once before the supreme court, and on that occasion he was unsuccessful. This appearance was in the case of Ware *v.* Hylton,[1] which was a suit brought by a British creditor to compel the payment by a citizen of

[1] 3 Dallas, 199.

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Virginia of a pre-Revolutionary debt, in conformity with the stipulations of the treaty of peace. During the Revolutionary War various states, among which was Virginia, passed acts of sequestration and confiscation, by which it was provided that, if the American debtor should pay into the state treasury the debt due to his British creditor, such payment should constitute an effectual plea in bar to a subsequent action for the recovery of the debt. When the representatives of the United States and Great Britain met at Paris to negotiate for peace, the question of the confiscated debts became a subject of controversy, especially in connection with that of the claims of the loyalists for the confiscation of their estates. Franklin and Jay, though they did not advocate the policy of confiscating debts, hesitated, chiefly on the ground of a want of authority in the existing national government, to override the acts of the states. But when John Adams arrived on the scene, he delivered one of those dramatic strokes of which he was a master, and ended the discussion by suddenly declaring, in the presence of the British plenipotentiaries, that, so far as he was concerned, he "had no notion of cheating anybody"; that the question of paying debts and the question of compensating the loyalists were two; and that, while he was opposed to compensating the loyalists, he would agree to a stipulation to secure the payment of debts. It was therefore provided, in the fourth article of the treaty, that creditors on either side should meet with no lawful impediment to the recovery in full sterling money of *bona fide* debts contracted prior to the war. This stipulation is remarkable, not only as the embodiment of an enlightened policy, but also as perhaps the strongest assertion to be found in the acts of that time of the power and authority of the national government. Indeed, when the British creditors, after the establishment of peace, sought to proceed in the state courts, they found the treaty unavailing, since those tribunals held themselves still to be bound by the local statutes. In order to remove this difficulty, as well as to provide a rule for the future, there was inserted in the Constitution of the United States the clause declaring that treaties then made, or

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which should be made, under the authority of the United States, should be the supreme law of the land, binding on the judges in every state, anything in the constitution or laws of any state to the contrary notwithstanding. On the strength of this provision, the question of the debts was raised again, and was finally brought before the supreme court, in the case of Ware *v.* Hylton. Marshall appeared for the State of Virginia, to oppose the collection of the debt. He based his contention on two grounds: First, that by the law of nations the confiscation of private debts was justifiable; second, that, as the debt had by the law of Virginia been extinguished by its payment into the state treasury, and had thus ceased to be due, the stipulation of the treaty was inapplicable, since there could be no creditor without a debtor.

It is not strange that this argument was unsuccessful. While it doubtless was the best that the cause admitted of, it may serve to illustrate the right of the suitor to have his case, no matter how weak it may be, fully and fairly presented for adjudication. On the question of the right of confiscation the judges differed, one holding that such a right existed, while another denied it, two doubted and the fifth was silent. But as to the operation of the treaty, all but one agreed that it restored to the original creditor his right to sue, without regard to the validity or the invalidity of the Virginia statute.

When Marshall took his seat upon the bench, the supreme court, since its organization in 1790, had rendered only six decisions involving constitutional questions. From 1801 to 1835, in the thirty-four years during which he presided in that great tribunal, sixty-two such decisions were given, and in thirty-six of these the opinion of the court was written by Marshall. In the remaining twenty-six the preparation of the opinions was distributed among his associates, who numbered five before 1808 and after that date six. During the whole period of his service, his dissenting opinions numbered eight, only one of which involved a constitutional question. Nor was the supremacy which this record indicates confined to questions of constitutional law. The reports of the court during

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Marshall's tenure fill thirty volumes, containing 1215 cases. In ninety-four of these no opinions were filed, while fifteen were decided "by the court." In the remaining 1106 cases the opinion of the court was delivered by Marshall in 519, or nearly one-half.[1]

No opportunity is afforded by the present occasion for an exposition of the questions of constitutional law decided by the supreme court during Marshall's term of service. Such an exposition would in reality involve a comprehensive examination of the foundations on which our constitutional system has been reared; and it is impracticable to do more than refer in the briefest terms to some of the leading cases. In one of his earliest opinions he established the vital principle that an act of Congress repugnant to the constitution is void.[2] He defined the law of treason.[3] He declared the invalidity of state laws impairing the obligations of contracts,[4] while he affirmed the right of the states to pass insolvency laws, in the absence of the exercise by Congress of its power "to establish uniform laws on the subject of bankruptcies."[5] He upheld the supremacy of the judgments of the courts of the United States, as against inconsistent state laws.[6] He maintained the authority of Congress to make all laws necessary and proper to carry into effect the powers vested by the constitution in the government of the United States,[7] and, in the exercise of powers fairly implied, to incorporate a bank, free from the taxation, control or obstruction of any state.[8] He affirmed that the power of Congress to regulate commerce embraced all the various forms of intercourse, including navigation, and that "wherever commerce among the states goes, the judicial power

[1] Hitchcock, The Development of the Constitution as influenced by Chief Justice Marshall. (1889.)

[2] Marbury *v.* Madison, 1 Cranch, 137.

[3] *Ex parte* Bollman & Swartwout, 4 Cranch, 75; U. S. *v.* Aaron Burr, *Ibid.*, App.

[4] Fletcher *v.* Peck, 6 Cranch, 87; Dartmouth College *v.* Woodward, 4 Wheaton, 518.

[5] Sturges *v.* Crowningshield, 4 Wheaton, 122.

[6] U. S. *v.* Peters, 5 Cranch, 136; Cohens *v.* Virginia, 6 Wheat. 264.

[7] U. S. *v.* Fisher, 2 Cranch, 358.

[8] McCulloch *v.* Maryland, 4 Wheaton, 316, 421.

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of the United States goes to protect it from invasion by state legislatures."[1]

To the rule that Marshall's great constitutional opinions continue to be received as authority, perhaps the chief exception is that delivered in the Dartmouth College case,[2] the particular point of which — that acts of incorporation constitute contracts which the state legislatures can neither alter nor revoke — has been greatly limited by later decisions, while its effect has been generally obviated by express reservations of the right of amendment and repeal. With rare exceptions, however, his constitutional opinions not only remain unshaken, but continue to form the very warp and woof of the law, and "can scarcely perish but with the memory of the constitution itself." Nor should we, in estimating his achievements, lose sight of the almost uncontested ascendency which he exercised, in matters of constitutional law, over the members of the tribunal in which he presided, in spite of what might have been supposed to be their predilections. When constitutional questions trench, as they often do, on the domain of statesmanship, it is natural, especially where precedents are lacking, that judges should divide upon them in accordance with the views of government maintained by the political parties with which they previously acted; and, after 1811, a majority of Marshall's associates on the bench held their appointment from administrations of the party opposed to that to which he had belonged. This circumstance, however, does not appear to have disturbed the consistent and harmonious development of the system to which he was devoted; and it was in the second half of his term of service that many of the most important cases — such as McCulloch *v.* Maryland, Cohens *v.* Virginia and Gibbons *v.* Ogden, in which he asserted the powers of the national government — were decided.

But it is not alone upon his decisions on questions of constitutional law that Marshall's fame as a judge rests. So marked was his supremacy in that domain, and so profoundly did his opinions affect the course of the national development,

[1] Gibbons *v.* Ogden, 9 Wheaton, 1; Brown *v.* Maryland, 12 Wheaton, 419.
[2] Dartmouth College *v.* Woodward, 4 Wheaton, 518.

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that we are accustomed to think of him in the United States only as the expounder of the constitution. This is not, however, his sole title to fame. He is known in other lands as the author of important opinions on questions which deeply concern the welfare and intercourse of all nations. In the treatment of questions of international law he exhibited the same traits of mind, the same breadth and originality of thought, the same power in discovering and the same certainty in applying fundamental principles, that distinguished him in the realm of constitutional discussions; and it was his lot in more than one case to blaze the way in the establishment of rules of international conduct. During the period of his judicial service, decisions were rendered by the supreme court in 195 cases involving questions of international law or in some way affecting international relations. In eighty of these cases the opinion of the court was delivered by Marshall; in thirty-seven, by Mr. Justice Story; in twenty-eight, by Mr. Justice Johnson; in nineteen, by Mr. Justice Washington; in fourteen, by Mr. Justice Livingston; in five, by Mr. Justice Thompson; and in one each, by Justices Baldwin, Cushing and Duvall. In eight the decision was rendered "by the court." In five cases Marshall dissented. As an evidence of the respect paid to his opinions by publicists, the fact may be pointed out that Wheaton, in the first edition of his *Elements of International Law*, makes 150 judicial citations, of which 105 are English and forty-five American, the latter being mostly Marshall's. In the last edition he makes 214 similar citations, of which 135 are English and seventy-nine American, the latter being largely Marshall's; and it is proper to add that one of the distinctive marks of his last edition is the extensive incorporation into his text of the words of Marshall's opinions. Out of 190 cases cited by Hall, a recent English publicist of preëminent merit, fifty-four are American, and in more than three-fifths of these the opinions are Marshall's.

One of the most far-reaching of all his opinions on questions of international law was that which he delivered in the case of the schooner *Exchange*, decided by the supreme court in

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1812.[1] In preparing this opinion he was, as he declared, compelled to explore "an unbeaten path, with few, if any, aids from precedents or written laws"; for the status of a foreign man-of-war in a friendly port had not then been defined, even by the publicists. The *Exchange* was an American vessel, which had been captured and confiscated by the French under the Rambouillet decree, a decree which both the executive and the Congress of the United States had declared to constitute a violation of the law of nations. She was afterwards converted by the French government into a man-of-war and commissioned under the name of the *Balaou*. In this character she entered a port of the United States, where she was libelled by the original American owners for restitution. Reasoning by analogy, Marshall, in a remarkably luminous opinion, held that the vessel, as a French man-of-war, was not subject to the jurisdiction of the ordinary tribunals; and his opinion forms the basis of the law on the subject at the present day.[2]

By this decision, the rightfulness or the wrongfulness of the capture and condemnation of the *Exchange* was left to be determined by the two governments as a political question. In this respect Marshall maintained, as between the different departments of government, when dealing with questions of foreign affairs, a distinction which he afterwards sedulously preserved, confining the jurisdiction of the courts to judicial questions. Thus, he laid it down in the clearest terms that the recognition of national independence, or of belligerency, being in its nature a political act, belongs to the political branch of the government, and that in such matters the courts follow the political branch.[3] Referring, on another occasion, to a similar question, he said:

In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own government. . . . If

[1] Schooner *Exchange v.* McFaddon, 7 Cranch, 116.

[2] This opinion was textually incorporated by Wheaton into his Elements, where it forms the statement of the law on various topics. — Dana's Wheaton, pp. 154–162.

[3] U. S. *v.* Palmer, 3 Wheaton, 610; The *Divina Pastora*, 4 Wheaton, 52.

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those departments which are intrusted with the foreign intercourse of the nation, which assert and maintain its interests against foreign powers, have unequivocally asserted its rights of dominion over a country of which it is in possession, and which it claims under a treaty; if the legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied.[1]

He also asserted the right of the government to enlarge the national domain, saying:

The Constitution confers absolutely on the government of the Union the power of making war and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty.[2]

But he held the rights of private property in such case to be inviolate.[3] The most luminous exposition of discovery as a source of title, and of the nature of Indian titles, is to be found in one of his opinions.[4]

A fundamental doctrine of international law is that of the equality of nations. If a clear and unequivocal expression of it be desired, it may be found in the opinion of Marshall in the case of *The Antelope*.[5]

No nation [he declared] can make a law of nations. No principle is more universally acknowledged than the perfect equality of nations. Russia and Geneva have equal rights.

The exemption from seizure and confiscation of the goods of a neutral on board of an armed vessel was maintained by him in the case of *The Nereide*.[6] When the representatives of the United States sought to establish at Geneva the liability of Great Britain for the depredations of the *Alabama* and other Confederate cruisers fitted out in British ports in violation of neutrality, one of the strongest authorities on which they relied was his opinion in the case of the *Gran Para*.[7]

[1] Foster *v.* Neilson, 2 Peters, 253.

[2] Am. Insurance Company *v.* Canter, 1 Pet. 511.

[3] Soulard *v.* U. S., 4 Pet. 511; U. S. *v.* Percheman, 7 Pet. 51; Keene *v.* McDonough, 8 Pet. 308.

[4] Johnson *v.* McIntosh, 8 Wheaton, 543.

[5] 10 Wheaton, 66; 11 Wheaton, 413.

[6] 9 Cranch, 388.

[7] 7 Wheaton, 471.

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In the decision of prize cases, Marshall, unlike some of his associates, was disposed to moderate the rigor of the English doctrines, as laid down by Sir William Scott.

> I respect Sir William Scott [he declared on a certain occasion] as I do every truly great man; and I respect his decisions; nor should I depart from them on light grounds; but it is impossible to consider them attentively without perceiving that his mind leans strongly in favor of the captors.[1]

This liberal disposition, blended with independence of judgment, led Marshall to dissent from the decision of the court in two well-known cases. In one of these, which is cited by Phillimore as the "great case" of *The Venus*,[2] it was held that the property of an American citizen domiciled in a foreign country became, on the breaking out of war with that country, immediately confiscable as enemy's property, even though it was shipped before he had knowledge of the war. Marshall dissented, maintaining that a mere commercial domicil ought not to be presumed to continue longer than the state of peace, and that the fate of the property should depend upon the conduct of the owner after the outbreak of the war, in continuing to reside and trade in the enemy's country or in taking prompt measures to return to his own. In the other case — that of the *Commercen*[3] — he sought to disconnect the war in which Great Britain was engaged on the continent of Europe from that which she was carrying on with the United States, and to affirm the right of her Swedish ally to transport supplies to the British army in the Peninsula without infringing the duties of neutrality toward the United States. As to his opinion in the case of *The Venus*, Chancellor Kent declared that there was "no doubt of its superior solidity and justice"; and it must be admitted that his opinion in the case of the *Commercen* rested on strong logical grounds, since the United States and the allies of Great Britain in the war on the Continent never considered themselves as enemies.

It is not, however, by any means essential to Marshall's pre-eminence as a judge, to show that his numerous opinions are

[1] *The Venus*, 8 Cranch, 253, 299. [2] 8 Cranch, 253. [3] 1 Wheaton, 382.

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altogether free from error or inconsistency. In one interesting series of cases, relating to the power of a nation to enforce prohibitions of commerce by the seizure of foreign vessels outside territorial waters, the views which he originally expressed, in favor of the existence of such a right,[1] appear to have undergone a marked, if not radical, change, in favor of the wise and salutary exemption of ships from visitation and search on the high seas in time of peace[2] — a principle which he affirmed on more than one occasion.[3] In the reasoning of another case, though not in its result, we may perhaps discern traces of the preconceptions formed by the advocate in the argument concerning the British debts.[4] This was the case of Brown *v.* United States,[5] which involved the question of the confiscability of the private property of an enemy on land, by judicial proceedings, in the absence of an act of Congress expressly authorizing such proceedings. On the theory that war renders all property of the enemy liable to confiscation, Mr. Justice Story, with the concurrence of one other member of the court, maintained that the act of Congress declaring war of itself gave ample authority for the purpose. The majority held otherwise, and Marshall delivered the opinion. Referring to the practice of nations and the writings of publicists, he declared that, according to "the modern rule," "tangible property belonging to an enemy and found in the country at the commencement of war, ought not to be immediately confiscated"; that "this rule" seemed to be "totally incompatible with the idea that war does of itself vest the property in the belligerent government"; and, consequently, that the declaration of war did not authorize the confiscation. Since effect was thus given to the modern usage of nations, it was

[1] Church *v.* Hubbart, 2 Cranch, 187.

[2] Rose *v.* Himely, 4 Cranch, 241. It was argued by Mr. E. J. Phelps, in the Fur Seal Arbitration, that the views expressed by Marshall in Church *v.* Hubbart, 2 Cranch, 187, were adopted by the supreme court in Hudson *v.* Guestier, 6 Cranch, 281. The latter case, however, merely decided that the sentence of a foreign court is conclusive as to the property condemned by it, and that it is not in this respect judicially reviewable by the court of another country. Marshall did not concur in this decision.

[3] *The Antelope*, 10 Wheaton, 66. [4] *Supra* p. 402. [5] 8 Cranch, 110.

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unnecessary to declare, as he did in the course of his opinion, that "war gives to the sovereign full right to take the persons and confiscate the property of the enemy, wherever found," and that the "mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice," though they "will more or less affect the exercise of this right," "cannot impair the right itself." Nor were the two declarations quite consistent. The supposition that usage may render unlawful the exercise of a right, but cannot impair the right itself, is at variance with sound theory. Between the effect of usage on rights and on the exercise of rights, the law draws no precise distinction. A right derived from custom acquires no immutability or immunity from the fact that the practices out of which it grew were ancient and barbarous. We may, therefore, ascribe the dictum in question to the influence of preconceptions, and turn for the true theory of the law to an opinion of the same great judge, delivered twenty years later, in which he denied the right of the conqueror to confiscate private property, on the ground that it would violate "the modern usage of nations, which has become law."[1]

United with extraordinary powers of mind we find in Marshall the greatest simplicity of life and character. In this union of simplicity and strength he illustrated the characteristics of the earlier period of our history. He has often been compared with the great judges of other countries. He has been compared with Lord Mansfield; and, although he did not possess the extensive learning and elegant accomplishments of that renowned jurist, the comparison is not inappropriate when we consider their breadth of understanding and powers of reasoning; and yet Mansfield, as a member of the House of Lords, defending the prerogatives of the crown and Parliament, and Marshall, as an American patriot, sword in hand, resisting in the field the assumptions of imperial power, represent opposite conceptions. He has been compared with Lord Eldon; and it may be that in fineness of discrimination and delicate perceptions of equity he was excelled by that famous Lord

[1] U. S. *v.* Percheman, 7 Peters, 51.

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Chancellor; and yet no greater contrast could be afforded than that of Eldon's uncertainty and procrastination on the bench with Marshall's bold and masterful readiness. He has been compared with Lord Stowell, and it may be conceded that in clearness of perception, skill in argument and elegance of diction, Lord Stowell has seldom if ever been surpassed. And yet it may be said of Marshall that, in the strength and clearness of his conceptions, in the massive force and directness of his reasoning, and in the absolute independence and fearlessness with which he announced his conclusions, he presents a combination of qualities which not only does not suffer by any comparison, but which was also peculiarly his own.

J. B. MOORE.

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EXPANSION AFTER THE CIVIL WAR, 1865–71.

I.

IN the years following the Civil War there occurred a series of attempts to bring about the annexation of certain non-contiguous territories to the United States. In one case — that of Alaska — success was attained; but in all the others, after prolonged effort on the part of an active band of expansionists, the stubborn resistance of both houses of Congress proved insurmountable. Yet, in spite of the different outcome, the movement of 1865–71 offers many points of resemblance to the recent series of annexations, and the reasons offered for and against expansion were essentially the same as those now made familiar by three years of vigorous debate.

The conditions in the United States which proved unfavorable to an expansionist policy in the earlier period may be summed up at the outset. It is true that then, as in 1898, the country was filled with self-confidence after the conclusion of a successful war, and no less with a keen sense of the hostility of European nations. At that time, as now, one foreign power by a show of friendship during the war had won the enthusiastic gratitude of the public, the difference being that Russia held the place occupied in 1898 by Great Britain. But, on the other hand, the United States of 1865–71 was not belligerent. The public had no enthusiasm over war, and the internal conditions of the country were such as fully to occupy all minds. Burdened under a mountainous debt, obliged to grapple with the difficulties of a depreciated currency and the reduction of the war taxes, the country was in no mood to incur large new expenditures. The harassing problem of reconstruction, involving the military control of eleven states, absorbed attention and made the prospect of additional dependent territory unattractive. Finally, the economic interests of the country, although expanding with prodigious rapidity, were

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turned irresistibly toward internal development — to railways and manufactures and away from shipping and foreign trade. There was no general demand for wider markets, no widespread desire for a chance to make investments outside the federal limits. The only forcible reasons which at that time suggested a policy of annexation were political and military ones, resulting from the experience of the Civil War, and these appealed to a comparatively limited number of persons.

That, under these circumstances, any attempts were made to annex new territory, was due to the presence of W. H. Seward in Johnson's cabinet as secretary of state. Seward was an original expansionist, a man of inveterate optimism, very susceptible to large ideas and given to sanguine speculations regarding the future destiny of the human race. Realizing that with Johnson's term his political career would probably close, he felt ambitious to signalize himself by diplomatic achievement, the more especially since his adherence to Johnson's plan of reconstruction had made him the object of general radical denunciation.[1] Since Johnson's entire interest was absorbed in the struggle with Congress over reconstruction, Seward had a free hand, and he succeeded in making a surprising number of treaties with all sorts of powers, large and small, on all kinds of subjects.[2] In method he was a diplomatist of the old school, quiet, suave, secretive, aiming above all things to avoid taking the public into his confidence.

The instant the pressure of war began to diminish Seward opened negotiations to secure a naval station in the West Indies, an object rendered very important in his eyes by the events of the war — the difficulties of keeping up a blockade on the Southern coast and, still more, of patrolling the Gulf and the Caribbean Sea against Confederate cruisers. Into the diplomatic details of what followed it is needless to enter here, a summary of the principal steps being all that the limits of this article will permit.

[1] Bancroft, Seward, II, 470–472.

[2] See list in Treaties and Conventions since 1776, Sen. Ex. Doc. no. 38, 41 Cong., 3 sess.

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In January, 1865, Seward suggested to General Raasloff, the Danish minister, that the United States might buy the small Danish Islands, St. Thomas, St. John and St. Croix.[1] The Danish government, at that time still sore over the loss of Holstein and Schleswig, was at first not at all willing; but a year later a new ministry gave Raasloff power to negotiate. Meanwhile Seward had gone to the West Indies to see things for himself, visiting in succession St. Thomas, St. Croix, San Domingo, Hayti and Cuba.[2] In January, 1866, Raasloff and Seward discussed the project, the Danish minister asking no less than twenty million dollars as a minimum price. The affair dragged and, Raasloff returning to Denmark in July, 1866, the negotiations were transferred to Copenhagen, where C. H. Yeaman conducted them for the United States. It was not until the winter of 1867, when still another Danish ministry came into office with a real willingness to sell the islands, that any progress was made.

In the meantime a second negotiation had been begun, with the purpose of securing a naval station, this time on the island of San Domingo. Here the power to be dealt with was, to say the least, elusive, for the island had been the scene of successive military revolutions in 1865 and 1866 and was to undergo three in 1867.[3] In 1866 Cabral, President for the moment of San Domingo, opened negotiations for the sale of Samana Bay. Admiral Porter, accompanied by Frederick W. Seward, the assistant secretary of state, was sent to investigate; but further steps were for the time prevented by a fresh outbreak of civil war in the island. As yet all things had been kept in purely diplomatic channels, the public being aware that something was in the air about the West Indies, but paying very little attention to it.

Suddenly, in the winter of 1867, an utterly unforeseen opportunity for annexation came in Seward's way, which he seized

[1] For negotiations with Denmark see J. Parton, The Danish Islands (Boston, 1869); Pierce, Sumner, IV, 328, 613; Bancroft, Seward, II, 48.

[2] F. W. Seward, Seward, III, 302; Bancroft, Seward, II, 48.

[3] For Seward's negotiations with San Domingo, see Bancroft, Seward, II. 486–489; also Sen. Ex. Doc. no. 17, 41 Cong., 3 sess.

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with the utmost alacrity. This was the offer by Baron Stoeckl, the Russian envoy, to sell the Russian possessions in North America.[1] The idea of such a purchase was not wholly new, for it had been suggested once or twice before, notably in 1859, at the instance of Senator W. M. Gwin of California,[2] but nothing had taken place immediately before 1867 to raise the question of annexation. All that Seward had done had been to refer to the Russian minister a petition of the Washington territorial legislature for better fishing privileges. Russia had had no profit from Alaska; it was at arm's length, bordering on the territory of England, an unfriendly power; and, now that the leases of the Russian American and Hudson Bay companies had expired, the occasion seemed favorable for getting rid of an undesirable piece of property. The proposal for a bargain was purely a matter of Russian initiative, but Seward did not hesitate. After a very brief negotiation, terms of cession were agreed upon. The treaty was signed mysteriously at dead of night on March 30, 1867, and on April 1 it was submitted to the Senate. There it was at once considered in executive session and, after one brief debate, was almost unanimously ratified on April 9.[3] Seward's policy of secrecy, swiftness and suavity had succeeded admirably. At no time had any knowledge of the negotiations reached the public, so that the sudden introduction and speedy ratification of the treaty came as a total surprise. The bewildered comments of the newspaper press during the week while the treaty was pending indicate clearly the entire absence of any popular feeling for or against annexation. In the Senate, so far as can be learned, the general feeling was of ignorance and indifference; and the ratification was due to a docile following of Sumner's long and able plea in behalf of the treaty and to a sentiment of regard for Russia, more than to any real opinion on the merits of expansion.[4]

[1] The authorities on the Alaska negotiations are as follows: C. Sumner, Speech on the Cession of Russian America, in Works, XI, 186–349; House Exec. Doc. no. 177, 40 Cong., 2 sess.; Pierce, Sumner, IV, 324–327; F. W. Seward, Seward, III, 346; Bancroft, Seward, II, 474.

[2] Speech of Sumner, in Works, XI, 203.

[3] Pierce, Sumner, IV, 325–328.

[4] "There is little doubt that a like offer from any other European government would have been rejected." — Blaine, Twenty Years of Congress, II, 333.

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Seward then turned with undiminished zeal to the West Indian project and during the spring and summer tried to accelerate the lingering negotiations with Denmark. By July a price was finally agreed upon, $7,500,000 for two islands; but the Danish ministry insisted on allowing the inhabitants of the ceded territories to vote on the question, which Seward objected to as likely to cause delay. The fact was that the shrewd secretary had become aware, since the ratification of the Alaska treaty, that popular sentiment was by no means favorable to expansion, and he was increasingly anxious to hasten matters.[1] At length, yielding the point of a popular vote, Seward caused the treaty to be signed at Copenhagen, October 24. Meanwhile he had hastened to secure the actual transfer of Alaska from Russia, although the appropriation of purchase money had yet to be made by the House of Representatives. On October 18, 1867, General Rousseau took formal possession, through the complaisance of Russia.[2]

It was none too soon; for within a month the House of Representatives showed for the first time how public sentiment was likely to regard Seward's plans. On November 25, 1867, C. C. Washburn, of Wisconsin, offered the following resolution:

That in the present financial condition of the country any further purchases of territory are inexpedient and this House will hold itself under no obligations to vote money to pay for any such purchase unless there is greater necessity for the same than now exists.

Washburn explained this as not intended to apply to Alaska, but more particularly to St. Thomas. "I intend," he said, "to serve notice upon the kingdom of Denmark that this House will not pay for that purchase." After a short debate this resolution was adopted without a division.[3]

[1] Seward wrote to Yeaman: "The desire for the acquisition of territory has sensibly abated. In short we have come to value dollars more and dominion less. I do not hesitate to say that the procrastination of negotiations even for those two islands may wear out the popular desire for even that measure." — F. W. Seward, Seward, III, 369.

[2] F. W. Seward, Seward, III, 368; House Exec. Doc. no. 177, 40 Cong., 2 sess.

[3] Congressional Globe, 40 Cong., 1 sess., 792. In order to consider the resolution the House voted to suspend the rules, 93 to 43.

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At about the same time the unfortunate Danish islands were successively devastated by an earthquake and a tropical cyclone, and newspapers began to come out flatly against their annexation as worthless and expensive.[1]

Notwithstanding these ominous signs, the treaty was pushed to a conclusion; the plebiscite was held in January, 1868, and both islands almost unanimously voted their approval of annexation; but the treaty, submitted to the Senate on December 3, 1867, although ratified by the islanders and by the Danish Chambers, remained untouched with the committee on foreign affairs through the whole long session. Seward's favorite policy of secrecy and suddenness was no longer possible.

On June 30, 1868, Gen. N. P. Banks, at this time the leading expansionist in the House, introduced the appropriation for the Alaska purchase money, now due for over a year, and there followed the first considerable public debate on the merits of this annexation and of expansion in general.[2] In spite of the fact that the treaty had been ratified and the territory handed over, an active minority urged the House to refuse the appropriation, and many who felt that repudiation was impossible censured the treaty and the transfer of possession. Some argued against payment, on the ground that it would help the Danish negotiations. "Pay this money," said Ferriss of New York, "and to-morrow a treaty for the purchase of St. Thomas and St. John will be thrust in our faces."[3] Nevertheless, the fact of actual possession of the territory and the strong feelings of friendship entertained for Russia made the opposition futile. The upshot of an ill-tempered debate was the passage of the appropriation, with an amendment asserting that the assent of Congress was necessary to the validity of the treaty.[4] This claim, reviving

[1] Bancroft, Seward, II, 484; F. W. Seward, Seward, III, 371; J. Parton, The Danish Islands, 33.

[2] Congressional Globe, 40 Cong., 2 sess.; summarized in Blaine's Twenty Years of Congress, II, 333–340.

[3] Congressional Globe, 40 Cong., 2 sess., 3668.

[4] "Whereas the subjects thus embraced in the stipulations of said Treaty are among the subjects which by the Constitution of the United States are submitted to the power of Congress . . . and it being for such reason necessary that the consent of Congress should be given to the said treaty before the same can have

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the famous one made at the time of the Jay treaty, was summarily struck out by the Senate, and the House submitted to a compromise which was a virtual surrender.[1]

During the next session of Congress Seward seems to have abandoned the Danish treaty. At all events he took no active steps in its behalf. General Raasloff, however, the Danish minister, a man long resident in the United States and very popular in Washington society, made a desperate effort to win over the Senate, appearing personally and by counsel before the committee on foreign affairs, giving dinners, distributing pamphlets, calling on Sumner almost daily. His efforts were entirely vain. The committee was unanimously against the treaty and, although out of consideration for Raasloff it was never actually rejected, it was suffered to lie on the table.[2] A year later an adverse report was given and the matter definitely ended.[3]

But, while Raasloff was fighting his losing battle, Seward in the last moments of his term made a final effort to bring about annexation by surprise, this time of San Domingo. The Samana Bay project, begun in 1866, had been revived in November, 1867, by Cabral, but had been again cut off by a revolution. In 1868 General Baez, now in control, approached Seward through the American representative in San Domingo and also through an agent named Fabens, with an offer not only of Samana Bay but of annexation.[4] There being no time for the negotiation and ratification of a treaty, two daring attempts were made to secure the end by indirect means.[5] The first, probably instigated by Seward, was the introduction by General Banks on January 12 of a joint resolution extending a protectorate over Hayti and San Domingo. After a long debate, in which much complaint was made of the vagueness of Banks's proposal, the

full force and effect . . . Sec. I. Be it enacted . . . that the assent of Congress is hereby given to the stipulation of said treaty."—Globe, 40 Cong., 2 sess., 3659.

[1] *Ibid.*, 4154, 4310, 4321, 4392, 4404.

[2] Pierce, Sumner, IV, 328.

[3] *Ibid.*, 323.

[4] F. W. Seward, Seward, III, 392; Bancroft, Seward, II, 488; Sen. Exec. Doc. no. 17, 41 Cong., 3 sess., p. 7.

[5] See Seward's letter to Banks, in F. W. Seward, Seward, III, 392.

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resolution was laid on the table, 126 to 36.[1] Two weeks later a more surprising move was made by G. S. Orth of Indiana, who on February 1 introduced a joint resolution to annex San Domingo, demanded the previous question and tried to cut off debate. The House was not to be stampeded in this fashion and laid the resolution on the table, 110 to 63.[2]

So ended Seward's régime. He had played his game skillfully and with a weak hand had scored one success. Had the Danish government met him halfway, as the Russians had done, his policy of secrecy and suddenness might possibly have brought St. Thomas under the flag; as it was, the procrastination and vacillation of the Danes gave time for an opposition to develop against which Seward, the suspected and discredited minister of the hated Johnson, was entirely unable to contend.

Seward's successor as an annexationist leader was none other than President Grant, who was his own foreign minister in matters relating to expansion. Grant's military habit of mind led him to greater directness of action than Seward's and to an utter disregard of ordinary diplomatic procedure. Moreover, unlike Seward, he came into office with tremendous prestige and a perfect willingness to fight in order to carry through his plans.

Now, although Grant had no intention of imitating Seward,[3] he had no sooner entered office than he proceeded to take up the San Domingo scheme just touched upon by Seward in the last months of his term. On being approached by an agent of Baez,[4] Grant was won to a high opinion of the military and economic value of San Domingo and sent his private secretary,

[1] Congressional Globe, 40 Cong., 3 sess., 317, 333. Banks was very averse to giving the term "protectorate" any definite meaning.

[2] *Ibid.*, 769. Banks tried vainly on February 8 to reintroduce Orth's motion. — *Ibid.*, 927.

[3] He is reported to have repudiated the St. Thomas treaty, as "one of Seward's schemes." — Pierce, Sumner, IV, 622.

[4] This was J. W. Fabens, who plays throughout a leading part in the San Domingo affair. — J. D. Cox, "How Judge Hoar ceased to be Attorney-General," in *Atlantic Monthly*, August, 1895, p. 164. See also Grant's Message of April 5, 1871, in Richardson, Messages and Papers of the Presidents, VII, 129.

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Gen. O. H. Babcock, with instructions to make inquiry as to Dominican feeling.[1] Babcock, as is well known, proceeded on September 4 to execute a protocol for a treaty of annexation, promising that General Grant would use his influence to secure its ratification. When Babcock brought back his protocol, Grant at once approved and sent him with three men-of-war to the island, where, on November 29, another definite treaty was made and the Baez government guaranteed against all enemies until it was ratified. Secretary Robeson, of the navy, then proceeded to keep the waters of San Domingo full of United States men-of-war, including ironclads, whose admiral openly threatened the authorities of Hayti with violence if they interfered in San Domingo. So, during 1869–71 Baez remained in power in San Domingo, backed to a greater or less extent by the presence of a United States squadron.

The stupefaction of the Cabinet when these matters were reported[2] was only exceeded by the horror of Sumner, chairman of the Senate committee on foreign affairs, when Grant sent the treaty to the Senate on January 10.[3] At first scarcely any one seemed to favor the treaty, in Congress or outside, the Senate committee being nearly as unanimous against it as it had been against St. Thomas. But Grant was no Seward, to submit with patience to delay. Annoyed at the slowness of the Senate,[4] he sent a special message on March 14 urging action, and by talking to senators personally began to show how great his interest was. The "administration" element, those men devoted to party unity, as well as Grant's special followers, now

[1] The leading authorities for the San Domingo negotiations are Sen. Exec. Doc. nos. 17 and 34, 41 Cong., 3 sess., which include the documents submitted by the secretary of state in answer to resolutions of the Senate; also Pierce's Sumner, IV, 426–496. Other papers are in the House Exec. Doc., 41 Cong., 2 sess., no. 237; 3 sess., nos. 42, 43.

[2] J. D. Cox, in *Atlantic Monthly*, August, 1895, p. 167.

[3] Grant made a clumsy attempt to secure Sumner's aid in advance, as Seward had done in the case of the Alaska treaty, by calling at his house and asking his support. Sumner replied evasively that he was, in general, an "administration man," which Grant took for a pledge of support. The upshot was a cry of bad faith against Sumner, when he opposed the treaty, and a question of veracity between the two men. — Pierce, Sumner, IV, 433.

[4] Pierce, Sumner, IV, 439; A. Badeau, Grant in Peace, p. 213.

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began to change front and the plan soon gained supporters. On March 24 the committee reported adversely to the treaty and the Senate considered it in a secret session, occupied mainly by a long speech of Sumner against ratification. After this no further action was taken until June 29.[1]

In the interval Grant's efforts continued. He interviewed senators, caused Secretary Fish, whose support of the scheme was reluctant and half-hearted, to labor with Sumner, and is reported to have used patronage largely to gain the support of carpet-bag senators, even though this involved dismissing Judge Hoar, the attorney-general, and replacing him with a Southerner.[2] At the same time B. F. Butler, of Massachusetts, already standing high in Grant's favor, signalized himself by making no less than nine successive attempts to introduce into the House, by unanimous consent, a joint resolution providing for the annexation of San Domingo.[3] As the limit of the period for ratification approached, Grant's efforts increased. He sent another long message on May 31, and later took up his station in the president's room in the Capitol where he sent for senator after senator in succession. On June 29 debate was finally resumed in the Senate and on June 30 the treaty came to a vote. The result is reported as 28 to 28, or, counting pairs, 32 to 30 — a majority of but two, when a two-thirds vote was necessary. When one compares this with the attitude of the Senate on the St. Thomas treaty, it is clear that Grant's influence had accomplished a great deal.

But this failure of the treaty did not cause Grant to desist. As, when foiled by Lee before Richmond, he moved by the left flank, so now he returned to the attack in the next session of Congress, by recommending in his annual message the

[1] Pierce, Sumner, IV, 440–442.

[2] *Ibid.*, IV, 439, 440; J. D. Cox, in *Atlantic Monthly*, August, 1895, pp. 167–170. See also New York *Evening Post*, March 25; New York *World*, March 23, 26, June 26–July 1, 1871; speeches of S. S. Cox and others in Globe, 41 Cong., 3 sess. Badeau, in his Grant in Peace, 214, says it was the common opinion that, if Grant would only have found an office for Sumner's friend, Ashley, the Massachusetts senator would have ceased to be troublesome.

[3] On April 5, 7, 9, 11, 13, 20; May 12; June 1, 14. These were blocked by Democratic Congressmen amid increasing ridicule at each repetition.

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annexation of San Domingo by resolution, "as in the case of Texas."[1] He also urged the appointment of a commission to negotiate a new treaty. The vote on the treaty in July had shown that possibly a majority of the Senate might favor a joint resolution, and the idea was not at once dispelled by the next step. Senator O. P. Morton, the leading supporter of the President, introduced a resolution for a commission of inquiry, which was considered on December 21 and 22. It was in this discussion that Sumner, shocked beyond measure at the naval support being furnished Baez, made his famous and bitter attack on Grant's policy as a "dance of blood," thereby stirring up an envenomed controversy. After a debate filled with stinging personalities, Sumner's amendments were rejected by large majorities and the resolution passed 32 to 9.[2] On January 9 and 10 it was introduced into the House by Orth, who tried as on a previous occasion to prevent debate. He was overridden, however, and a general discussion of the whole subject took place, scarcely less bitter than that in the Senate. Charges of corruption were made and repelled. Swann asked:

> Why the interest which has been manifested in this whole subject? Why do we see here day after day distinguished senators who are known to be in accord with the purpose which the President proposes to carry out? Why do we see here the Secretary of the Navy and the Postmaster-General lobbying upon this floor for the purpose of passing through this extraordinary measure in such hot haste?[3]

The result was different, for the House, on the motion of J. A. Ambler of Pennsylvania, adopted by a vote of 108 to 76 an amendment in these words: "provided that nothing in these resolutions will be held as committing Congress to the policy of annexing the territory of said republic."[4] This vote of the House killed the San Domingo scheme, for it was clear that

[1] Richardson, Messages and Papers of the President, VII, 101.

[2] Congressional Globe, 41 Cong., 3 sess., 183, 190, 222, 225, 236; Pierce, Sumner, IV, 456–461; W. D. Foulke, O. P. Morton, II, 152–168.

[3] Congressional Globe, 41 Cong., 3 sess., 411.

[4] Congressional Globe, 41 Cong., 3 sess., 381, 416; summarized in Blaine, Twenty Years of Congress, II, 458–463.

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annexation by joint resolution was not possible. The Senate adopted the House amendment,[1] and the commission was sent, consisting of Andrew D. White, S. G. Howe and B. F. Wade. This committee made a warmly favorable report, which Grant submitted to the Senate on April 5, 1871, but no action was ever taken.[2]

At about the same time Grant, in answer to resolutions introduced by Sumner, submitted papers making clear the part the navy had been playing in the whole affair, which led to a second severe attack on Grant by Sumner in the debate of March 27.[3] Meanwhile Sumner's opposition had cost him the chairmanship of the committee on foreign affairs which he had held since 1861. So, in an explosion of personalities, bad temper and vindictiveness the San Domingo scheme finally came to its end. Grant reiterated his views on later occasions, but took no further steps to frame a treaty. The masterful, persistent, popular President had failed as signally as had the suave, secretive and unpopular Secretary of State.

II.

In considering this expansion movement as a whole, it is worth while to note the resemblances and contrasts it offers to other annexations. It differs obviously from the cases of the Mexican and Spanish cessions of 1848 and 1898 respectively, in not being the logical result of foreign conquest. It was in a certain sense the outcome of the Civil War, inasmuch as military considerations played a large part in each of the proposed purchases; but, except in the case of St. Thomas, the hope of economic gain was of greater weight. It differs from the purchase of Louisiana, 1803, of Florida, 1819, and the annexation of Texas, 1845, in the absence of any pressing visible reasons, such as the desire to get rid of an unpleasant neighbor in the first two cases and the existence of a vigorous public

[1] There was a second savagely personal debate, Congressional Globe, 426.

[2] The report of the commission is in Sen. Exec. Doc. no. 9, 42 Cong., 1 sess.

[3] Congressional Globe, 42 Cong., 1 sess., 294–307; Pierce, Sumner, IV, 483–487.

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demand in the second and third. Finally, it was unconnected with any internal political questions, therein differing entirely from those annexations made, or attempted, in the hope of gaining additional territory open to slavery. This differentiates it from the efforts to annex Cuba under Pierce and Buchanan, a movement which in some respects resembled that under Seward and Grant.

The only case which is entirely parallel is that of the attempted annexation of Hawaii under President Harrison. Here we find expansion for its own sake in time of peace and the acquisition of a non-contiguous territory justified by military and commercial reasons that were applicable almost *verbatim* to the earlier efforts.[1] If we neglect the events of the Spanish War, we find the recent annexations bearing a closely similar character, distant and tropical territories being acquired for reasons identical with those urged thirty years before. One may then fairly consider the movement of 1865–71 as prefiguring, in the essential questions at issue, the movement of 1893–98.

In the diplomatic and congressional action during this period we find several striking features: the shrewd and secret diplomacy of Seward, the surprising suddenness of the Alaskan annexation, the intense eagerness and military contempt or ignorance of international conventionalities shown by Grant, and the dramatic quarrel between Sumner and the Grant administration, with its result in the humiliation and complete deposition of the great Senator from his position as party leader. But legally the movement showed little that was novel. Annexation was attempted by the treaty power only, and the attempt by the House in 1868 to reassert its right to approve or reject the financial parts of the Alaskan treaty was scarcely more than an outbreak of bad temper. Had Grant, Butler and some other radical expansionists had their way, the case of Hawaii in 1898 would have been anticipated in the admission by joint resolution of San Domingo as a territory; but this plan never proceeded beyond the opening

[1] See detailed comparison in *Nation*, December 16, 1897.

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stage, owing to its evident hopelessness in the face of an adverse majority. The scheme was referred to once or twice in debate and denounced as unconstitutional, but it was never a real issue.[1]

The motives of the leaders in this movement, although considered mysterious at the time, seem clear to-day. With Seward, for all his secrecy, there was no other purpose than the wish to acquire valuable territory and incidentally to increase his own fame.[2] This is shown clearly in his writings. Neither in Alaska nor in St. Thomas does it appear that there were any special private interests involved.[3] As for the Russian and Danish governments, their action seems to have been prompted by the desire to exchange outlying possessions of little value for ready money.[4] Political motives appear also to have had a share in the case of Russia, the Czar preferring to have the friendly United States as a neighbor, rather than hostile England.[5]

On turning to San Domingo, however, one encounters a different atmosphere; the military adventurer Baez seems to have been surrounded by friends with considerable pecuniary interests in the island, who took a leading part in promoting the annexation. From the outset there is a smack of petty intrigue, much talk of concessions, grants, interests, *etc.*, and an evident connection of certain New York speculators with the Baez government. It is safe to say that the almost universal belief that there was something corrupt in the whole affair played a large, if not a decisive, part in causing the rejection of the project.[6] Nobody at that time or since who knew

[1] See remarks of Thurman and Davis on December 20, 1870, in Congressional Globe, 41 Cong., 3 sess., 193, 195.

[2] Bancroft, Seward, II, 470–472, 490, 491; F. W. Seward, Seward, III, 383. In the language of Seward's opponent, it became his "mania for buying land." — New York *Tribune*, November 13, 1867; Boston *Advertiser*, April 22, 1867.

[3] See Sumner's speech (Works, XI, 205–207) for evidences of Californian interests in Alaska.

[4] See Parton, The Danish Islands, *passim*, and Sumner's speech, Works, XI, 201–203.

[5] Bancroft, Seward, II, 474; House Exec. Doc., 40 Cong., 2 sess., vol. i; Diplomatic Correspondence, 1867–68; Sumner's speech, Works, XI, 201.

[6] The statistics as to concessions and privileges are found in Sen. Exec. Doc. no. 17, 41 Cong., 3 sess.; also in S. Hazard, Santo Domingo, Past and

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Grant held that he was personally corrupt. His motive seems to have been an honest belief that San Domingo would be a valuable possession and ought to be annexed. The extremely strong interest he took, more marked than in anything else in his two terms, seems to have been largely due to sheer pugnacity. As opposition developed, his interest grew into a determination to push the matter through as a personal affair. Being a man of untimely reticence and singularly dense on points of civil propriety, he took unexplained steps which were susceptible of the worst construction. Such were his amazing use of Babcock, his personal dealings with senators, and his employment of the navy to protect Baez for almost two years.[1]

Since this was the epoch of plebiscites in Europe, that feature played its part in the West Indies, although to Sumner's regret[2] it was inapplicable to Alaska. In St. Thomas and St. John the people were doubtless in favor of annexation.[3] In San Domingo a vote, interrupted by guerilla fighting, was taken in 1870, and the result is stated to have been overwhelmingly for annexation; but the circumstances seem to have been anything but favorable for a free expression of opinion. The commissioners of 1871, however, reported the existence of a general desire for union with the United States. Just how much weight to attach to these statements is not

Present (New York, 1873), p. 491. For testimony as to the character and methods of Baez and his associates, see Report of Select Committee appointed to investigate the Memorial of Davis Hatch, June 25, 1870, Sen. Exec. Doc. no. 234, 41 Cong., 2 sess. The current newspaper gossip is illustrated by *Nation*, December 29, 1870; New York *Tribune*, February 2, June 15, 1870; New York *World*, March 15, May 24, 1870; *Annual Cyclopedia*, 1870.

[1] "It would sometimes happen that his habitual reticence would make him the victim of sophistries which were not exposed and which his tenacity of purpose made him cling to when once he had accepted them." (J. D. Cox, in *Atlantic Monthly*, August, 1895, p. 173.) The *Nation*, December 29, 1870, spoke of Grant's "unfortunate facility in being hoodwinked by plausible knaves." "Grant may be sincere and honest, but can the country trust his judgment?" — New York *World*, May 23, 1870.

[2] M. Story, Sumner, 339.

[3] The vote is described as being officially controlled, and the voters "a sorry-looking crowd." — New York *World*, February 10, 1868.

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clear, in view of the peculiar nature of the San Domingo people and government.[1]

Turning from the negotiations to their effect on the United States, it is interesting to trace the differing phases of public opinion during the years 1865–71. Of course, at no time were questions of annexation foremost in people's minds; for in contrast with the events of reconstruction, the quarrel of Johnson with Congress, the elections of 1866 and '68, the impeachment trial, financial legislation and the dealings with Great Britain over the Alabama claims, the question of the expenditure of a few millions and the acquisition or rejection of a few not very attractive pieces of territory seemed a mere side issue. Newspapers very often noticed the progress of negotiations without taking the trouble to comment upon them. It was not until the sudden ratification of the Alaska treaty, when people realized that the country actually had a quantity of new territory on its hands, that editorial writers found it necessary to have an opinion.[2] At once it appeared that there was a very widespread doubt of the value of Alaska or of the necessity of any purchases, and an equally strong opinion, held by some writers, that any expansion was in itself to be commended. In the next autumn, when the news of the St. Thomas treaty came vaguely to America, there arose a steady fire of objections, which increased in severity when the report of the earthquakes of November showed, as the New York *Tribune* said, that "our proposed foothold in the West Indies was likely to be a shaky one."

By the summer of 1868, when the first public debate took place on a question involving expansion, it appeared that there was a sharp division of sentiment in the House. The acute

[1] The taking of the vote is described in R. H. Perry's despatches in 1870, Sen. Exec. Doc. no. 17, 41 Cong., 3 sess. The statement of the commissioners is in their report, Sen. Exec. Doc. no. 9, 42 Cong., 1 sess. Other testimony on the subject is in Hazard's Santo Domingo, Past and Present.

[2] The process was often amusing, owing to the gropings of the editorial mind, but from vague generalities there usually evolved in a short time definite opinions. See, for example, New York *Tribune* and Boston *Advertiser*, March 31–April 10, 1867.

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phase of reconstruction was now passing and by the winter of 1868–69 general attention began to turn again toward financial and foreign affairs. Hence, when Grant revived the San Domingo scheme, annexation became at once a public question. In this last period, however, party considerations counted for more than at any previous time. When Seward was in power, there had been a certain tendency for administration papers to uphold his policy and for radical Republicans and ultra Democrats to oppose it out of dislike for him.[1] In Grant's time the circumstances worked the other way; for the strong desire of nearly all Republican editors to maintain harmony in the party made them very cautious in condemning the Domingo scheme and very reluctant to seem to oppose the President.[2] The same influence is distinctly evident in the Senate and House, but, as has been shown, the desire for harmony and Grant's prestige were not strong enough to overcome the settled opposition developed during the preceding three years. The general attitude of the country was indifferent, lukewarm, unresponsive.[3]

Still, though the general atmosphere was unfavorable, there were to be found a good many moderate advocates of the treaties and not a few upholders of "manifest destiny" in its most extreme form. From the utterances of these in Congress or in print, it is easy to summarize the arguments of the annexationists, and it is safe to say that there is not an important reason urged at the present moment for the retention of the Philippines and Porto Rico which is not prefigured in the years in question.

The foremost argument employed to justify the annexation

[1] This is clearly manifested in almost every "radical" Republican paper.

[2] This is most clearly shown in the attitude of the New York *Tribune*, which had violently opposed the Alaska and Danish treaties and only reluctantly changed front on the San Domingo question in order to uphold the administration. Very many of the leading advocates of Grant's treaty made his wish their avowed reason for supporting it and condemned Sumner, Schurz and others, not so much for opposing annexation as for opposing Grant.

[3] There was a public meeting at Cooper Institute, New York City, which favored annexation; but this is reported to have been brought about by some of the Dominican ring, Fabens, Cazneau and others.

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of Alaska and San Domingo was that of economic and commercial value. The advocates of these respective treaties found no words too strong to describe the fisheries, furs, forests and mineral wealth of the one territory or the inexhaustible abundance of the tropical products and mines of the other.[1] In fact, they went so far as to produce incredulity by the exaggerations of their language — as when Banks claimed that Alaska controlled the China trade;[2] when J. A. Johnson of California said, "Give us Alaska and right soon we will make California so great that you will all boast when you go abroad that you live under the same Federal jurisdiction that we do;"[3] or when Grant claimed that with the possession of San Domingo "it is easy to see how our large debt abroad is ultimately to be extinguished,"[4] that it would "restore to us our lost merchant marine" and "furnish our citizens with the necessities of everyday life at cheaper rates than ever before," and that "calamities would flow from non-acquisition."[5]

A second argument was in regard to military value. The three territories, it appears, were all "keys." "Now, sir," cried Banks, "the possession of Alaska is the key to this ocean."[6] "It gives us a paramount influence in the Pacific," said the New York *Times*, March 31, 1867. For St. Thomas this was the main, almost the only, argument; and it was urged by Seward, through Johnson's annual message, by Parton in his pamphlet and by a few others.[7] Vice-Admiral D. D.

[1] The fullest arguments on this score are to be found in House Exec. Doc. no. 177, 40 Cong., 2 sess., on Alaska, and Sen. Exec. Doc. no. 17, 41 Cong., 3 sess., and no. 9, 42 Cong., 1 sess., on San Domingo.

[2] Cong. Globe, 40 Cong., 2 sess., 3625; Appendix, 388.

[3] *Ibid.*, p. 3627.

[4] Message of May 31, 1870.

[5] Second Annual Message, December 5, 1870. Horace Greeley ridiculed this amusingly, in describing the dinners by which Seward won over senators to support the Alaska treaty. "Mr. Seward's dinner-table," said the *Tribune*, April 8, 1867, "is spread regularly with roast treaty, boiled treaty, treaty in bottles, treaty in decanters, treaty garnished with appointments to office, treaty in statistics, treaty in a military point of view, treaty in a territorial grandeur view, treaty clad in furs, ornamented with walrus teeth, fringed with timber and flopping with fish."

[6] Cong. Globe, 40 Cong., 2 sess., Appendix, 388.

[7] Third Annual Message, December 3, 1867; Richardson, Messages, VI, 579; Parton, The Danish Islands, 6, 61–65; *Nation*, February 3, 1870.

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Porter said: "It is a central point from which any or all of the West India Islands can be assailed, while it is impervious to attack. It is the keystone to the arch of the West Indies; it commands them all."[1] As regards San Domingo, this claim was vigorously pushed by Grant and his followers. "It commands the entrance to the Caribbean Sea and the isthmus transits of commerce."[2] "It is the key to the Gulf of Mexico," said J. E. Stevenson of Ohio, "a prize to any power; to us it is only less than a necessity."[3]

To accelerate matters, Grant repeatedly stated that, unless the United States annexed San Domingo, some European nation would do so at once.[4] "If refused by us, by what grace can we prevent a foreign power from attempting to secure the prize?"[5]

Further, the "benevolent assimilation" argument was vigorously urged. Sumner, in his Alaska speech, advocated the treaty as an extension of republican institutions.[6] The consent of the people of St. Thomas and St. John was supposed to show their wish for American institutions, but it was with regard to San Domingo that this plea was most persistently employed. As early as February, 1869, the New York *Tribune* stated that the leading men of the island "deem it best, so we are assured, to join their fortunes with ours and work out the problem of their future under our flag and under our institutions."[7] But before this, Johnson's message of December 9, 1868, written probably by Seward, had announced that it would not be long "before it will become necessary for this government to lend some effective aid to the solution of the social and political problems which are continually kept before the world by the two republics of the Island of San Domingo," and added that annexation would "receive the consent of the people interested."[8] Grant put the case much more strongly:

[1] Parton, The Danish Islands, 63.
[2] Messages, VII, 62.
[3] Cong. Globe, 41 Cong., 3 sess., 409.
[4] Messages, VII, 61, 63, 99, 129.
[5] *Ibid.*, 61. The same argument was used by Sumner regarding Alaska. — Speech in Works, XI, 223.
[6] Works, XI, 221.
[7] February 17, 1869.
[8] Messages, VI, 688, 689.

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"The people of San Domingo are not capable of maintaining themselves. . . . They yearn for the protection of our free institutions and laws, our progress and civilization. Shall we refuse them?"[1] He felt impelled to urge the treaty out of regard "for the welfare of a downtrodden race, praying for the blessings of a free and strong government and for protection in the enjoyment of the fruits of their own industry."[2]

Morton claimed that annexation "has been the earnest desire of the great body of the people . . . with the exception of a few desperate military adventurers."[3] "It is certainly for their interest," said W. M. Stewart, of Nevada,

to come under our protecting laws. What they want is stability. There is nothing conceivable that would be of so much benefit to the black man in those islands as annexation to the United States. . . . To talk about their resistance to an European despotism and then to talk of their making the same resistance to annexation to a free Republic, seems to me absurd on the very face of it.[4]

Other arguments to induce the House to appropriate the Alaska purchase money were friendliness to Russia and the necessity of keeping good faith. This last was also urged by Parton in behalf of the Danish treaty.[5] There can be no doubt that the feeling of regard for Russia played a very great part. It is admitted by almost every one, even by those opposing the treaty.[6]

But above all one encounters the doctrine of "manifest destiny," of expansion as something necessary and inevitable. This was widespread. It was in the air, admitted by very many who opposed the treaties on grounds of expense and proclaimed vigorously by the advocates. There was much talk of annexing Canada,[7] Cuba, Hawaii and Mexico for various reasons,

[1] Messages, VII, 61.
[2] *Ibid.*, VII, 129.
[3] Cong. Globe, 41 Cong., 3 sess., 237.
[4] *Ibid.*, 428.
[5] Danish Islands, 43, 46. This was ridiculed by the *Tribune*, March 24, 1869.
[6] Shellabarger, of Ohio, in opposing the treaty, said: "I approach the matter . . . under the enormous pressure which that feeling brings upon my mind that it might be deemed unfriendly on our part toward Russia should we not ratify this treaty." — Cong. Globe, 40 Cong., 2 sess., Appendix, 337.
[7] Sumner at one time urged that Canada ought to be ceded by Great Britain as recompense for the Alabama damages.

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and very little denial of the desirability of such acquisitions — if not immediately, then at some future date. It would be easy to fill pages with illustrations. Sumner held that all North America must become part of the United States.[1] Seward, speaking through Johnson in annual messages, said: "The West Indies naturally gravitate to and may be expected to be absorbed by the continental states, including our own";[2] and later: "Comprehensive national policy would seem to sanction the acquisition and incorporation into our Federal Union of the several adjacent continental and insular communities."[3]

Similar views were repeatedly uttered in the House and Senate. B. F. Butler said in 1869 of the West Indies, "They belong to us by position and laws of Nature."[4] "Sir," said Morton in reply to Sumner, "I regard it as destiny, not to be averted by the Senator from Massachusetts, nor by any power, that we shall acquire San Domingo and Cuba and Porto Rico."[5] "We rise from rebellion," said Stevens in the House, "conscious of our power, full of hope and confidence. Such a nation cannot shrink from her destiny. She does not shrink, she welcomes it."[6] "I am an original West Indian expansionist," said T. Fitch, of Nevada; "I shall vote for the commission because I hope and believe that it will be followed, sooner or later, by the annexation of Dominicana by joint resolution, and I am confident that . . . in due course there will follow the acquisition of Hayti and Cuba."[7]

There was much talk of expansion as an inevitable general fact, usually introduced by references to Louisiana, Florida and the Mexican acquisitions. "The principle of Chinese exclusiveness and non-expansion," said the New York *Herald*, "finds few advocates. The progress and expanding power of a great, active and ambitious nation cannot be restrained."[8] "Nothing less than a continent," cried Ignatius Donnelly,

[1] Works, XI, 219–221, 223, 232–234.
[2] Messages, VI, 580.
[3] *Ibid.*, 688, 689.
[4] Cong. Globe, 40 Cong., 3 sess., 333.
[5] *Ibid.*, 41 Cong., 3 sess., 238.
[6] *Ibid.*, 409.
[7] *Ibid.*, 411.
[8] April 11, 1867.

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"can suffice as the basis and foundation for that nation in whose destiny is involved the destiny of mankind!"[1] H. Maynard, of Tennessee, exalted "that spirit of expansion, if you please — of aggression, that . . . will eventually make the republic the mistress of the world."[2] Occasionally the Anglo-Saxon was referred to in a way now familiar.[3]

On the other side the one predominant argument was that of expense. Every single speech in opposition to expansion dwelt on the financial burdens of the country, many who argued this way avowing their willingness to support an annexation policy under different conditions. Undoubtedly this point was decisive in turning many expansionists against the treaties. In addition, the opponents of annexation invariably began by trying to depreciate the economic value of the land in question. Alaska was subjected to a flood of abuse, especially from the New York *Tribune*, which never referred to it for years without a sneer. It was denounced as "worthless, inhospitable, wretched, God-forsaken," and was called "Walrussia" from its supposed sole product, "a national ice house," *etc.*[4] St. Thomas and St. John were decried as petty islands, barren and worthless. "In thirty-three hours," said the *Tribune*, "St. Thomas has 327 earthquakes. What a nice place for a naval station!"[5] Every effort was made to prove the islands a useless source of expense.

The naval argument in favor of purchase was met by the reply that the islands would entail expense without rendering any compensating service, would call for fortifications and a navy,[6] and would be simply a vulnerable point in war.

As to the desire of the Dominicans for the protection of the United States, this was usually denied,[7] but was quite as

[1] Cong. Globe, 40 Cong., 2 sess., Appendix, 403.

[2] *Ibid.*

[3] *Ibid.*, 40 Cong., 3 sess., 335, speech of T. Mullins.

[4] See list of adjectives in F. W. Seward, Seward, III, 367.

[5] December 13, 1867; January 1, 1868.

[6] New York *Tribune*, September 11, 1867; October 14, 1868. Schurz, in Cong. Globe, 41 Cong., 3 sess., Appendix, 32.

[7] See Sumner's speech of December 20, 1870, *passim*.

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often met with the argument that the country could not afford to annex a barbarous people. "The first duty of the American people is to its own people," said the *Nation*.[1] The *Tribune* said plainly:

> We cannot afford to swallow new territory and peoples too rapidly. Our republican institutions now more than ever before can rest safely only on the general intelligence and virtue of the people. . . . Here are elements enough for lowering the standard of our suffrage. We need to make haste very slowly indeed toward this further addition of the turbulent, indolent, unstable and uneducated Spanish Americans.[2]

Schurz, in a similar vein, argued the unsuitability of a tropical island for the white race, supporting his view by the history of colonization.[3]

Such considerations led to the question of the future government of these acquisitions, and here the opponents placed themselves squarely on the ground of the present anti-imperialists. Many of them were Democrats, whose attitude was much affected by their opposition to the Republican reconstruction policy.[4] The *Tribune*, in September, 1867, stated the case clearly: "We cannot have colonies, dependencies, subjects, without renouncing the essential conceptions of domestic institutions." The New York *World* argued that a colonial policy was unconstitutional, quoting the Dred Scott decision.[5] B. F. Butler, later a vigorous expansionist, protested in the Alaska debate against the acquisition of uncontiguous country as a new departure.[6] J. Scott, of Pennsylvania, in the San Domingo debate, said: "We are now asked not simply to annex territory within the continent, but to go outside and commence the policy of insular acquisition. It is a wide departure we are asked to take from the original

[1] December 29, 1870.

[2] June 15, 1870.

[3] Cong. Globe, 41 Cong., 3 sess., Appendix, 25.

[4] The Indiana Legislature passed a resolution against the San Domingo Treaty. — W. D. Foulke, Life of O. P. Morton, II, 168.

[5] March 4, 1870.

[6] Cong. Globe, 40 Cong., 2 sess., Appendix, 402.

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policy of the government."[1] Senator Bayard went still further:

It is proposed [he said] that we should embark the government of the United States upon the vast and trackless sea of imperialism, to change it into an imperial government of outlying and distant dependencies with a foreign population, strangers to us in race, in blood, in customs. . . . We have natural boundaries. One of these is the Atlantic Ocean. Are the people of America prepared to disregard every tradition of their government? . . . Such a scheme of empire, if indulged in, will destroy our republican system of government. The population of this island or of these islands can never be governed by a constitutional government like ours; they are utterly unfitted for it.

He then cited Washington's Farewell Address.[2] Schurz also declared that the West Indies could never be self-governing, but would be "provinces, colonies, satrapies . . . which will corrupt our public life and impart to our government a military character most destructive to its republican attributes."[3] Lastly, a certain portion of the present anti-imperialists were represented by Sumner, who in the San Domingo case saw nothing but the injustice of annexing a people against its will and dwelt almost entirely upon the details of Grant's intervention, which, as has been said, he painted in the darkest colors. This was largely due to the fact that San Domingo was a negro community, and it shocked all his sentiments of friendship to a downtrodden race to find its only self-governing island threatened. He summed up his position in his peroration:

I protest against this resolution as another stage in a drama of blood. I protest against it in the name of justice outraged by violence, in the name of humanity insulted, in the name of the weak trodden down.[4]

The impression produced by a study of the contemporary debates and newspapers is that there was a great deal of latent expansionism in the country, and that under different

[1] Cong. Globe, 41 Cong., 3 sess., 194.

[2] *Ibid.*, 225, 226.

[3] *Ibid*, Appendix, 29.

[4] Pierce, Sumner, IV, 441, 456, 457, 483; Cong. Globe, 41 Cong., 3 sess., 226–231.

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conditions the schemes of Seward and Grant might very well have been carried through. But the pressure of debt, of taxation, of a depreciated currency rendered any unnecessary expenses objectionable unless for immediate results, and the appalling difficulties of the negro question in the South made the annexation of a turbulent negro community unattractive. Moreover, the attention of the country was fully occupied with internal affairs, and the tendency was to resent Seward's and Grant's attempts to enter upon an expansionist policy as an annoying interruption, almost an impertinence.

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RESPONSIBILITY IN COUNTY GOVERNMENT.

A SURVEY of our political development reveals a significant tendency toward securing responsibility in the management of the affairs of government. The most common manifestations of this tendency are found in the application of the theory of the separation of powers and the vesting of financial control in that organ which represents, in a particular manner, the sovereignty of the people. Administration has been popularized, the executive has been reduced to a position of responsibility to the public and the theory of the separation of powers has been written into the constitution of every modern state which has realized political liberty.

These facts are commonplaces in the history of our own political development. Thus, the failure of the provincial governor to render satisfaction to the people of his colony led to the gradual modification of his original position, through the increasing power of the colonial legislature, which established a popular control over his acts in so far as they pertained to the internal affairs of the colony. At the end of the colonial period the local legislatures had acquired the right to vote the colonial budget, to specify the objects of expenditures and to appoint the principal fiscal officers. The result was popular control over the administration and the establishment of a definite responsibility of the colonial officials to the legislature in financial affairs.

The colonial conception of responsibility in administration was incorporated in the state and federal constitutions. The early state constitutions, almost without exception, asserted the doctrine of popular sovereignty and the theory of the separation of powers as basic principles in the formation of a system of government. A century of constitutional experience has scarcely changed this original view of the proper sphere of executive power.

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In an attempt to trace the degree to which these principles have been applied to the government of the subordinate political divisions in the United States, the changes in the charters of cities afford a conspicuous illustration of our tendency to separate legislative and executive functions, and at the same time to preserve popular control over the financial policy of the city. While variations in environment and a régime of special legislation have tended to destroy any continuity of municipal development in the United States, and have defeated in many instances the attempt to secure a responsible administration of municipal affairs, we can none the less discern in city government the same general tendency toward a system of definite responsibility that is apparent in our commonwealth and federal systems. The power of the city council, originally all comprehensive, has been gradually modified by transferring to the mayor and to various city departments the execution of the ordinances of the council and a general supervision over the city administration. But this separation of legislative and executive functions has generally been effected without impairing the control of the council over the financial policy of the city.

Little attention has been given to the problem of county government in the United States since the well-known types were first developed, during the colonial period, by the adaptation of English models to the needs of the new communities. The states which have followed the era of the first constitutions have done little more than appropriate these types in the organization of their systems of local government. The colonial systems, having been developed among new communities and for new communities, required few changes in their rapid spread across the continent. The fact that little attention has been given to our county governments is doubtless explainable on the ground of the larger and more pressing need of legislation for our municipalities. But within recent years the administrative activity of the county has materially expanded, owing to the new crusade for better roads and other public works which require a constantly increasing revenue.

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We must therefore expect that, with the growing importance of county administration and the increased importance of its financial policy, some demand will arise for a more definite responsibility in the management of county affairs.[1]

A study of our county governments, as they exist at present, reveals that a crude application of the theory of the separation of powers has already been made. In so far as legislative and executive functions have been separated, the latter have been scattered among a number of county offices, which are found, with a few differences in name and powers, throughout the states of the Union. This transfer of executive duties is not yet complete, however, since the county boards still exercise many powers which are executive in their character; nor has the transfer as yet developed that responsibility which is necessary to secure the best results in administration. The functions exercised by the regular county executive officers are almost without exception clerical and ministerial in their nature. These officers exercise few discretionary powers, and are in no manner concerned with the development of the administrative policy of the county. They are integral parts of the state administration, as well as officers of the locality. The courts have emphasized this closer relationship of the more important county officers to the central administration and also the merely clerical character of their duties. In so far as the discretionary powers of the county officers have been reduced to absolute and unconditional statements, it must be considered a step in the direction of securing responsibility. But since the scope of these powers is insignificant, we are compelled to regard the county board as the seat of general responsibility in the management of the local affairs of the county. It is the analysis of this responsibility which must reveal the character of the county government.

The various forms of county government in the United States are generally regarded as falling into three classes, the justice

[1] Bulletin of Municipal Association of Cleveland on the Administrative Methods of the Board of County Commissioners of Cuyahoga County, Ohio, October 27, 1897.

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of the peace system of the South, the board of supervisors system of New York, and the three commissioners system of Pennsylvania. In many of the states of the West, the county boards have been so modified as to destroy some of the most essential differences that distinguish the generally recognized types. For our purposes the county boards may be grouped into two classes, on the basis of their representative character. In the first falls the justice of the peace system of the South and the supervisor system of New York, both of which are representative, although they may differ widely in other respects. In the second class stands the three commissioners system of Pennsylvania, which has practically no representative character. As the more important problems of county government are at present found in those states which have the supervisor and commissioner systems respectively, we are able to narrow our study to these systems, in our effort to determine the most important steps which have so far been taken towards securing responsible administration.

In these the county boards, irrespective of the character of their organization, generally exercise similar functions. They develop the general policy of the administration, vote the budget, levy the county rate, audit the accounts of the executive officers, both of the county and of the townships, and exercise legislative functions, as well as those executive functions which have not been transferred to some special officer of the county. It will be observed that these powers include many which are usually regarded as incompatible with one another, particularly those of raising and of spending the revenues, of determining the tax rate and of auditing the accounts, many of which are accounts of their own expenditures. The administration of county affairs has hitherto been quite destitute of the restraints that are usually provided in such cases.

As the business of county government becomes more complicated and expensive, the need of financial responsibility will become more apparent and will ultimately compel a differentiation of those powers which now reside exclusively in the county board. An alternative expedient would be the

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introduction of an effective supervision by the state government over the locality; but this seems hardly feasible in most of the states, because of the widespread feeling that the liberties of the locality would be endangered by the presence of a central authority.

The theory of responsibility, as worked out in the supervisor system of county government, is expressed mainly in the representative character of the board. The fact that each township, and often each ward, sends one supervisor to the county board, brings all interests of the people before it and provides many safeguards which tend to insure a careful consideration of all those interests, and thereby to ward off adverse criticism. On the other hand, in many of the more populous counties of some of the states the county boards have grown so large as to necessitate their reorganization in order to facilitate business. In connection with this, there has been manifested a purpose to establish a more definite responsibility than that which resides in the board as a whole; and accordingly there have been developed two different methods of modifying its exclusive power, namely, the adoption of the committee system and the creation of an executive authority within the body of the board.

The nature of the responsibility which is secured by the committee system may be best illustrated by selecting as an instance a typical county in a state which possesses the supervisor plan of county government in a pure form. In 1895 Fond du Lac county, Wisconsin, with twenty-one towns, had a population of 47,000. The county also has three cities, which together contain fifteen wards. Each township and ward sends one representative to the county board, making a total of thirty-seven members.[1] In order to overcome the difficulty of transacting business with such large numbers, the board is grouped into committees, among which the various functions are distributed. The number of members composing these committees varies from three to twelve, and they are appointed by the president of the board. An examination of the records of the board of supervisors of Fond du Lac county reveals the

[1] Some of the county boards of the state have as many as sixty members.

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fact that the board rarely rejects, or even modifies, the reports and recommendations of the various committees. The board may of course exercise its power by a veto over the acts of the committees.

The committee system, as employed by the boards of supervisors of Wisconsin, is open to the same objections which are urged against this plan of legislative organization in general. It secures, doubtless, a more careful consideration of matters which come before the board than could be given by the board as a whole, but it does not succeed in locating in a satisfactory manner that responsibility which the county business seems to demand. The effectiveness of the committee system depends in a considerable degree upon the nature of the functions exercised by the board. So long as these functions remain legislative, and the board is restricted to the voting of the revenues and to defining the general financial policy of the county, responsibility is sufficiently guaranteed by the existing system; but, whenever it exercises executive powers, some other restraint becomes necessary. For example, in the matter of claims against the county, the committee having them in charge exercises great powers, and its decisions are especially important from the fact that the board usually sanctions them without change. But a definite responsibility is lost between committee and board. And the system, moreover, provides no method of restraining the board in the exercise of those powers which are purely administrative.

The second method developing responsibility in the management of county business in those counties which possess the supervisor system is perhaps best illustrated by recent legislation for Cook county, in the state of Illinois. The state constitution of 1870 provided a special plan of representation for Cook county, with the aim of securing a proper relation between the rural and the urban interests in that county. The constitutional arrangement did not, however, destroy the character of the board, as an example of the supervisor system of county government. After a number of years of experience it was found that, owing to the large and complicated interests

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which the board was compelled to regulate, the county government was too expensively managed. A specific solution of the problem thus raised was provided by the legislature in an act of June 15, 1893, which created the office of county president, and vested in the incumbent all those powers that in our federal, state and municipal systems are usually conferred upon the executive. The office was made elective. Each voter was empowered to designate upon his ballot his choice for county president, from among all the candidates who presented themselves for the position of supervisor, and the supervisor receiving the highest number of votes was, by the terms of the law, elected to the office.

In addition to the lesser powers conferred upon him by virtue of his election as supervisor, the county president is by the recent law endowed with large executive powers also, as representing in a special manner the electorate of the entire county. In the first place, he becomes responsible for the execution of the will of the county board; and this power of execution is made most vital by the fact that the president is given the right, with the consent of the board, to appoint such county officers as are not elected by the people, this list including ten important positions which are not subject to civil-service rules, as well as many others which are under the control of the civil-service commission. The president is thus responsible, in a particular manner, for the administration of the county affairs.

In the second place, the county president is given a veto power almost as comprehensive as that conferred upon our state and federal executives. The law of 1893 provides that the county board shall frame an annual budget, which shall be passed by a specified date and in a specified manner, and which shall not be increased thereafter except under extraordinary circumstances. Furthermore, when the expenditure exceeds $500, the board cannot delegate the "power to act" to any of its committees or to any person whatever. The part played by the county president in this scheme for securing financial responsibility is contained in the veto power which he exercises, in a specific or in a general manner, over the items of

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the annual appropriation bill. His veto extends to "all resolutions which directly or indirectly lead to the appropriation of moneys." Although the veto is not absolute and may be overcome by a four-fifths vote of the board, it nevertheless serves as a useful check upon hasty and ill-advised expenditure.

In all essential particulars this law of 1893 for Cook county is in harmony with the trend of the development of executive power in the United States. It secures financial responsibility, through the separation of legislative and executive functions, and at the same time preserves control by the representative organ of the county government over the financial policy of the county. The Cook county board becomes the organ which determines the policy of the county, by reason of its exclusive right to vote and expend the county revenues; while the county president, by virtue of his large powers of appointment and veto, is the organ through which that policy reaches its execution. The creation of such an executive within the board must be considered a natural and probable step for those counties which possess the supervisor plan, whenever the enlargement of county business shall call for the location of a more definite responsibility.

An examination of the form of responsibility embodied in the commissioner plan of county government reveals a fundamental difference from that contained in the supervisor plan. The supervisor system is at least popular, and secures representation to all the interests of the county; while the commissioner system, on the other hand, is so little representative as practically to neutralize even popular control by election. This form of county government prevails in a number of the states of the Middle West, and, until certain recent legislation in the state of Indiana, little change had been made in the original form of the system, as developed in Pennsylvania during the colonial period.

An adequate notion of the changes introduced by this Indiana legislation, as well as of the general results of the commissioner system, can be obtained only by a brief survey of previous legislation pertaining to the county government of

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that state. The present organization of the county boards of Indiana dates from the constitution of 1851, which forbade any but general legislation upon matters pertaining to local units. In addition to this important check upon special legislation for the counties, — an abuse which had been too frequent prior to 1851, — the new constitution removed the regular county offices from legislative controversy, by making them permanent parts of the county government and providing that they should be filled by popular election; but it reserved to the legislature the power "to confer upon the boards doing business in the several counties powers of a local and administrative character."

These constitutional provisions cleared the way for the county law of June 17, 1852, which confirmed the growing feeling in favor of the Pennsylvania system. The plan of government provided by this act did not differ from the main features of the commissioner system, except in the responsible manner in which the board was permitted to exercise its discretionary powers. It might appropriate and execute the budgetary items, with no other restraints than those provided by constitutional and statutory limitations upon its taxing power and by the uncertain moods of public opinion; and it received a large and indefinite grant of powers, including all those not specifically delegated to some other county authority.

The irresponsible position of the board with respect to the exercise of its financial powers involved the greatest dangers. The power to raise and expend moneys, unlimited save by the easily evaded restriction provided by the constitution and the statutes, led in the course of a number of years to a serious indictment of the economy, and even the honesty, of county administration, as conducted by the board of commissioners. By the provisions of the law, the county executive officers could use no funds which had not been previously provided by the county board. But the actual practice was quite different. It had become a common thing all over the state for the county officers to make their purchases and to present to the board their claims, which then, and not till then, took on

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the form of an appropriation. It is only natural that, in this reversal of the order of appropriation, the county board became the dupe of various schemes in the purchase of county supplies. The claims were usually granted in a perfunctory manner and without much inclination to discuss their merits. The commissioners were not required to give bonds, and in general were at liberty to act upon all matters within the legal jurisdiction of the board, unless action was clearly tainted with fraud. It would be difficult to conceive of a more irresponsible authority in charge of the county business. Moreover, owing to the limited number constituting the board of commissioners, opportunity was only too great for personal and secret deals, which could not have been put through a more numerous body in the light of greater publicity and full discussion. The evil results of such a system of county government are inevitable; and on the records of the courts of the state of Indiana there exist ample and substantial proofs of the careless and extravagant manner in which the county business was conducted in many counties. It was openly asserted by the Indiana state board of commerce that the county boards alone had cost the people of the state as much as $100,000 annually in fraudulent contracts, and that to this sum must be added excessive and improvident expenditures by the boards, as well as by the township trustees of the state.[1]

The severe arraignment of so venerable an institution as the county board, which had served the counties of the state for nearly half a century, soon crystallized the forces of reform, and their efforts culminated in the county law of March 3, 1899. The central purpose of this act was to locate responsibility in the administration of the county affairs. The framers of the new law wished to preserve the old county boards, so far as possible, and yet at the same time to secure a more popular and responsible administration. The idea of creating a new authority which should represent the taxpayers more clearly and more closely in the development of the financial policy of the county not unnaturally suggested itself. The

[1] Address at annual meeting held at Indianapolis, January 18, 1898.

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law therefore created in each county of the state a county council, composed of seven members, four of whom should be elected by separate "councilmanic" districts and three by the county at large.

The powers of this county council have been derived by transferring to it the fiscal powers of the old county board. These fiscal powers are grouped into four classes, the most important of which is the exclusive right to vote all appropriations for county expenses. The new law is especially concerned with the preparation and voting of the county budget. In the second place, it is now provided that the budget must be "itemized with as great particularity as possible" and can be amended only by the action of the council. Upon the basis of these appropriations, the council fixes the rate of the county levy. As a third power, it possesses the exclusive right to borrow money and to issue bonds for a period of not more than twenty years. Finally, the council is vested with the sole power to purchase and sell any real estate of the county exceeding $1000 in value.

By the creation of the county council for the popular control of the fiscal affairs of the county, and by the preservation of the old board for the exercise of those executive powers which have not been given to the regular county officers, the separation of legislative and executive functions is in a general way provided for. At least, the council becomes the organ which determines the policy of the county administration, while the board of commissioners executes this policy. The budgetary act of the council expresses its general administrative policy, and this act the board must respect in all its details.

The significance of the reform of county government in Indiana is further illustrated by the changes which were effected by an act of the same date in the township organization of the state. The act was framed to correct abuses similar to those prevailing in county government and to provide for a more definite responsibility in the management of township affairs. The township trustee had for upwards of forty years exercised an autocratic and irresponsible power.

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He was virtually czar within his little empire — the absolute business head of two separate township corporations. As the business head of the "school township," he hired the instructional force, purchased the school supplies, built and maintained the schoolhouses and fixed the school levies. As the business head of the "civil township," he distributed the poor fund and the fund for public works, besides attending to other important duties. For all these purposes he made his own levy, voted his own expenditures, executed his own contracts and practically audited his own accounts. His office was a bundle of offices in one. This statement of the condition of local despotism enables us to comprehend the disastrous results of the system, which have been a standing menace to the public morality of the state.[1]

The township act of 1899 provided for the evil a solution similar to that embodied in the county law. The township trustee was retained as the business head of the township; but there was also created a representative body, composed of three members, which should represent the taxpayers, and to this board was given exclusive control of the fiscal matters of the township.

In this discussion of the theory of responsibility, as worked out in recent legislation pertaining to county government, we have purposely confined ourselves to those organs which control the general policy of the county administration, and more particularly to the location of the financial responsibility. The steps which we have noted as having been taken in Illinois and Indiana not only have value as an indication of the trend of county development under the influence of our larger political experience, but they also point to the necessity of extensive reorganization in a field in which there has hitherto been only halting administrative development.

As has been suggested, still another method by which financial responsibility may be secured in the administration of local

[1] Address of the County and Township Government Commission to the Citizens of Indiana, November 23, 1898.

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affairs is through the creation of a central supervision over the financial acts of the locality. Where this method is in use, there is not the same necessity for the creation of a system of checks and balances in the county government itself. In many of the states there are already noticeable numerous and well-defined steps toward the centralization of their administrative system. This method, however, assumes the form of supervision, rather than of actual administration, by the central authorities. In supervision, at least, the various authorities charged with the administration of schools, the public health and charities have become quite centralized.

For examples of positive legislation designed to secure financial responsibility through central administrative control, we must go to the Western States. When, in 1889, the constitution of Wyoming was framed, an article was included providing for the office of state examiner, who should supervise the accounts and finances of the localities of the state. The legislature has since strengthened further the original position of this officer, especially with regard to his control over local expenditures. Thus, he is now empowered not only to examine all local accounts with reference to their correctness, but also to inquire into the legality or extravagance of all county expenditures. The result of this supervision has been most beneficial. County expenditures have been reduced, and a more careful consideration of county business has been encouraged. In a lesser degree, Indiana, Minnesota and Texas have taken steps to secure central supervision of the accounts of their localities. This method of securing financial responsibility in the management of county affairs will doubtless meet strong and continued opposition on the part of those who regard it as a direct attack upon our traditional ideas of local self-government; and therefore a separation of legislative and executive functions, accompanied by popular control over the fiscal affairs of the county by a widely representative body, seems to be the more probable solution of the difficulties surrounding our county government.

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THE DECLINE IN ENGLISH LIBERALISM.

THE general election in England has come and gone without producing brighter results for the Liberal party. It is true that the election was sprung upon the country, but the results would not have been essentially different, had this not been the case. Scores of seats were uncontested by the Liberals, indicating an apathy and a helpless feeling almost unknown before. During a period of fifteen years three general elections with overwhelming majorities have gone to the so-called Unionist party, but only one with a tiny majority to the Liberal party. How is such a phenomenon to be explained?

Within the inside circles of Liberalism one hears much of personal issues, but no sweeping results are to be explained thus. I do not suggest that these personal quarrels have nothing to do with the demoralized condition of the party, but they have merely accentuated a state of chaos already existing. We must go deep in searching for causes of political disaster, and we must try to eliminate personalities, as far as can well be, and look to large and far-reaching influences. I venture to submit an explanation of the Liberal collapse which, though at first sight it may seem paradoxical, will be found to meet the requirements of a sound hypothesis by explaining the facts.

The Liberal party, then, has gone under because of its remarkable success. It has, in the main, carried out the program which it set itself to carry out. Moreover, so complete has been its achievement that its opponents have aided it to do its task and have appropriated most of its work. The willingness of the English Conservative party to adopt what has become inevitable and to bow before the accomplished fact stands out in a conspicuous manner, as compared with the methods of French conservatism, which, after making ineffectual protests, retires to its rural châteaux and to the Faubourg St. Germain and keeps up a semi-treasonable agitation against

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the government and the new laws demanded by public opinion. The English Conservative, on the contrary, accepts the new conditions and pretends that he was always in favor of them. In this fact will be found, I venture to think, the chief cause of the decline of the English Liberal party.

This process, first definitely conceived and systematically carried out by Disraeli, was begun by Wellington and Peel in the year 1828, in connection with Catholic Emancipation. The Whigs had been honorably and consistently identified with the Catholic cause. So, too, had Pitt, who was dismissed by George III because he was faithful to the promise he had given at the destruction of the Irish Parliament, that the Act of Union should involve the full liberation of the Catholic population. But the later Tories, who commended themselves to the king and the regent, were the representatives of an insane bigotry, and under their rule the Catholic cause stood no chance. It was only when O'Connell had become the uncrowned king of Ireland and resistance to reform was dangerous in the extreme that Wellington and Peel surrendered. They simply thought they were acting as peacemakers, and so they were. But they were also beginning that process of undermining Liberalism by appropriating its principles which has continued to our own day.

Two years after came the great movement for Parliamentary reform. It seemed at first as if a purely adverse and reactionary attitude would be taken up by the Tory party. Wellington, Inglis, Croker, Twiss resembled, each in his way, French reactionaries, rather than the complacent Conservatives with whom we have become acquainted in later times. But, as usual in England, a convenient compromise was arranged to which the king was a party, and, as soon as the reformed Parliament met, the Tory party was as ready for the conversion of the new voters to the Tory creed as if no such thing as reform had ever been heard of. Here was act two in the political drama. First, religious liberty had been admitted, now Parliamentary reform was accepted by Toryism. Dr. Johnson spoke with scorn of the "bottomless Whigs" of his day. What would he

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have said of the degenerate condition of the fine old crusted Toryism, of which he was the greatest champion of his time? Yet, had not Toryism given way, it would have been a dead creed.

Within nine years of the passing of the Reform Act, Toryism had become so strong that it swept the country, and the Peel ministry of 1841 came in with a huge majority. Devoted by ties of both sentiment and interest to the landlords of England, the Peel ministry represented the high protectionist element, as opposed to the new free-trade doctrines which Cobden, with a persuasive logic never surpassed in England, was pressing on the mind of the country. A superficial observer would have imagined that Peel and his cohorts were so much in the ascendant that the Corn Laws would stand. But, as soon as economic pressure in the form of the Irish famine acted on the Tory party, Peel instantly threw up the sponge, decreed the death of protectionism and accepted the whole body of free-trade economic doctrine. It is true that, for a time, he split up the Tory party, but the protectionist wing made no headway and died out in a few years.

Here, again, another great Liberal reform was actually carried by the Tory party, and that a reform far more deadly to Tory interests of the most obvious character than either parliamentary reform or religious status. It is true that the official Whigs under Melbourne and Russell were hardly less friendly to free trade than was the Tory party. The free-trade movement was made up of a *nouvelle couche sociale*, differentiated alike from Whig and Tory. All the more remarkable its triumph; all the more significant the abdication of the Tory party, and its acceptance of this economic principle of advanced Liberalism. It was the most striking political English capitulation of the century, as far-sighted Tories saw.

In the year 1853 Mr. Gladstone, as chancellor of the exchequer in the Peelite ministry of Lord Aberdeen, produced and carried a budget of an almost revolutionary character. The collapse of protection had rendered new financial methods necessary, and that budget was Mr. Gladstone's most signal

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achievement. It contained provisions disagreeable to the Tory party and was much criticised. But it became law, and the finance so established was never contested until the new high imperialism necessitated new and very doubtful methods, under whose depressing influence English consols have declined in value some sixteen points in about two years. The alarums and excursions which are connected with the name of Palmerston belong to this period, and he so hypnotized the Liberal party that it became like its opponents. So, in the era from 1855 to 1865 we find a surrender of the Liberal party to the Tories and an acceptance of Tory methods and principles, rather than the surrender of Toryism to the inevitable Liberal advance.

As soon, however, as Palmerston passed away, the Liberals girt themselves for a new struggle on the old battle-ground of parliamentary reform. Again the old phenomenon appeared. The Russell-Gladstone bill for a slight extension of the suffrage having been defeated by a small majority, Disraeli instantly seized the opportunity to "steal the clothes of the Whigs while they were bathing." He first introduced a "fancy franchise" bill; but when it was thrown out, he at once brought forward a much more comprehensive measure than that of Mr. Gladstone, conferring a vote on every householder in the land. Again Toryism took the sails out of the hands of Liberalism; again a great Liberal reform was appropriated by the party which had but a short while before been hostile to all reform. The present Lord Salisbury declared that it was a violation of principle; and so it was. But it helped to stave off revolution; it kept the party system going, while making it more of a sham; and it converted Lord Salisbury himself to the opinion that it was useless any longer to attempt to "stem the torrent of democracy."

The Tory party could do nothing against the great reforms initiated by the first and best ministry of Mr. Gladstone, that of 1868–1873. Spite of a vigorous agitation in behalf of the State Church of Ireland, its disestablishment was carried, Queen Victoria, it is said, mediating between the two parties

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for generous terms for the clergy. The ballot, the new system of public primary education, the new army system and other reforms were made good. But the point is that, save as regards the educational system, the Tories accepted all these reforms, and so Toryism and Liberalism became less and less divided. "We have secured all that we want," said in effect thousands of the well-to-do class which in former days had been Liberal; "now it is time to rest and be quiet. We shall either cease to take a prominent part in Liberalism, or we shall go over to the new Conservatism, which has ceased to be persecuting and stupid and has become moderate and the friend of property, respectability and the older Liberal attitude."

This tendency of moderate people was confirmed by the newer development of the labor movement. I am somewhat anticipating, but even in the earlier seventies there were not wanting signs of the new spirit in the English labor movement. The trade unions were completely emancipated, and the strikes, the energetic speeches of labor men and the claims put forward were all abhorrent to the *bourgeois* who had been a Liberal, but who now saw his modest fortune threatened by men of a lower social stratum. The International was then a formidable power, or at least was supposed to be, and it had begun its career in London and under the auspices of Englishmen. The distrust and suspicion excited by the trend of affairs in the labor world helped to swell the Tory majority of 1874, the year in which the stampede from Liberalism first became manifest.

But another surrender of Toryism was destined to occur. During the Disraeli premiership the chief subject agitated before Mr. Gladstone began his Bulgarian campaign was the extension of the suffrage to the rural laborers, who had been left out of the measure of 1867. Even a few of the Liberals did not like this project, which was opposed by the present Duke of Devonshire, then nominally leader of the Liberal party. As for the Tory party, it was against the project. But the year 1884 came and the measure was carried with the aid of the Tory party, the redistribution of seats involved being

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settled by an arrangement between leading representatives of both parties. Thus again had Toryism capitulated. Thus again had Liberalism been deprived of a rallying cry, and therefore of one more reason for existence. The differences between the two parties had now been reduced to so narrow a line of demarcation that it was hard to tell in what Liberalism and Toryism respectively consisted. Under such conditions the elections of 1885 were fought. The Liberal party was divided, and hence weakened; the Tories had no proposals; and it was not wonderful, therefore, under such circumstances, — with a new electorate, with a Gladstone wing and a Chamberlain wing, with the Liberals discredited in their foreign policy and the Irish in deadly hostility, — that the election should show no clear result.

Thus the close of 1885 found the old Liberal program and the old Liberal party largely exhausted. This condition of things (proved by the meagre Liberal items of reform set before the country by the Liberal leader) led to two results. First, a considerable section of the Liberal party began to think of leaving it. Secondly, Mr. Gladstone, when he discovered that the elections yielded no issue, commenced to turn his attention to a new issue which he was soon in a position to force on the party — the issue of Irish Home Rule. As soon as he opened up the question and showed that he had been converted to the Home Rule cause, the wavering Whigs grasped at the excuse for leaving a party with which they had little sympathy, and in whose future they did not believe. Thus the split of 1886 was inevitable, growing out of the political conditions which obtained in England — namely, the exhaustion of the Liberal party and the consequent ending for a time of real party divergencies, as they had existed when the words "Tory" and "Whig" or "Liberal" represented a living reality.

In other countries, it may be pointed out, a similar state of things obtained. But in these countries parliamentary groups of a more or less definite character arose. In England the Liberal party would not admit its true condition; nay, it does

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not yet admit it. It pretends to be a united party holding a common creed. So long as Mr. Gladstone was leader of the party, differences were concealed behind his colossal form. But as soon as he retired, these differences at once broke out, and now they stand so obvious before the people that it is no wonder the electorate does not dream of placing the Liberal party in office. Apart from personal quarrels, — with which, as I have said, we have nothing to do here, — these differences concern foreign and colonial politics, and what is generally called the question of militant imperialism. The accession of Lord Rosebery to office in 1894 brought these questions at once to a head.

It is not my purpose to review the history of the unfortunate Rosebery ministry or the conduct of Lord Rosebery since, still less the story of the Salisbury ministry, with its wars and rumors of wars. I wish now to point out the singular remedy offered to the Liberals, in order to restore them to health and strength. Just as Liberalism permeated the Tory party, and as the Tories accepted all the chief results of Liberal reform and seemed to thrive upon this strange diet, so now it is suggested that, were the Liberal party to take to the Tory diet, it might recover its energies and be once more robust and full of life. In other words, the Liberal party is recommended to take a deep draught of imperialism and so beat the Tories on their own ground, just as the Tories have taken up reform and beaten the Liberals on their own ground. It is assumed that imperialism is inevitable, that it is a final product, if not of human wisdom, at least of practical necessity. There is really no theory of imperialism in England, as there is in Russia or Germany. It is all hand-to-mouth, designed for the moment, altered from time to time to suit convenience. Based as it is on two facts, — trade necessity, or supposed necessity, and the racial feeling which leads such a colony as New Zealand to join in the South African war, — imperialism in England perhaps has no need of that intellectual defense which one finds for *Weltpolitik* in Germany. Such as it is, it is the dominant factor in English politics

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to-day, and there would seem to be on superficial grounds something to be said for the notion that, were the Liberal party to take up imperialism actively and aggressively, it might in a few years supersede the Tory party by gaining once more English confidence. Yet I am persuaded that there is no greater delusion.

There is, in the first place, a vital difference between Toryism and Liberalism. The latter must advance; the former has only to defend and accept whatever is inevitable. While it has been necessary and politic for the Tory party to accept all the various reforms to which I have referred, it does not follow that it would be well for the Liberals to reciprocate this action. The Liberal rôle is essentially different. For the Liberal party to take up the defense of certain interests because they are powerful or for the moment popular, would be for the Liberal party to abdicate its function of attack and initiative. It is for this reason that the party must, at the risk of losing many votes, attack the huge vested drink interest and initiate reforms in education and local government. As well might a man cease to walk and think he could retain the use of his limbs as the Liberals abstain from their function of attack and initiative and hope to maintain political vitality. The party must be aggressive or cease to exist. The Tories need not do this; they are only expected to defend the *status quo* and to accept what has been positively accomplished.

There is, therefore, no *prima facie* case for supposing that, because the Tory party has attached itself firmly to the cause of high imperialism, it would do the Liberal party any good to attach itself also to that cause for the purpose of making political capital. The business of the Liberal party is not to follow the Tory, though it is the business of the Tory party to follow the Liberal. Besides, as Mr. John Morley said in a very powerful speech at Oxford, if the electorate desires imperialism, it will infallibly go to the Tories for it, and no specious special pleading on the part of the Liberals will be able to turn votes on that issue. Consequently, from the electoral point of view, the adoption of a strong imperialism

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would be a most mistaken policy for the Liberal party. Recent history confirms this theory. Mr. Gladstone was led in 1882 into a policy of imperialism in Egypt from which he shrank. Whether he was right or wrong in his policy of intervention, I do not say. What is certain is that that policy shattered his ministry and his party. The imperialistic policy of Lord Rosebery during his short term of the premiership left him with a party weaker than any English party has been during the present century.

Now this can be no mere accident. If the adoption of the Tory policy of imperialism is disastrous for Liberals, there is some reason for the fact. By imperialism, it will be understood, I do not mean the discharge of absolutely needful duties in regions *de facto* under British sway and for which the British authorities are responsible. I assume that no party at present would argue for neglect of obvious duty, however many Liberals, like Grafton in the eighteenth century and Bright in the nineteenth, deeply regretted the annexation of India. What I mean by imperialism is, first, the repeated annexation of territories during the last few years, mainly in Africa, and, second, the justification of such annexations on commercial, political and moral or quasi-moral grounds. It is not to be wondered at that such a policy should have approved itself to the Tory party. For, in the first place, it provides numerous posts, both civil and military, for the people connected with the party. Secondly, it assures activity in the speculative markets, — one might say the gambling markets, — such as the "Kaffir Circus." Thirdly, it ensures the perpetuation of Tory doctrines at home, through the military men and civilians who hold the offices in the dependencies. For these, on retirement from active service, come to England and take part in politics, local and national, and their training in arbitrary and practically irresponsible rule fits them for active work on the side of class interests and Toryism.

Imperialism, therefore, is a paying business for the Tory. But for the Liberal who believes in the ground principles of Liberalism, it is deadly. Every extension of the Empire

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means more class feeling at home, more of the Anglo-Indian feeling, less of the old humane ideas of Fox, Mill and Cobden. I am not bringing, it will be understood, any sweeping charges against the imperial official or military class; I am merely contending for the indubitable fact that the extension of that class is fatal to what we have known as Liberalism. If this is so, then it follows that it cannot pay the Liberal party to vie with its opponents in the cult of imperialism. Liberalism, by so doing, would defeat its own ends. The end of Toryism is only the preservation of the *status quo*, however that may have been reached. But the end of Liberalism is a certain ideal of public life, which is incompatible with the sway of the official or soldier whose life has been spent in ruling other people against their will, or at least without consulting that will. When Liberalism admits, as a political theory, that people are to be ruled forever on such a basis, it has practically ceased to exist, and can only be what Disraeli said the old Tory party was, an organized hypocrisy. So it becomes clear that Liberalism cannot rejuvenate itself by borrowing from the imperialism of its opponents.

In the next place, even the strongest imperialist will admit that his ideal may conceivably be carried too far. To every one but a mere fanatic the Greek idea of poise or balance in the state must always present itself as attractive and necessary. The most thorough-going Radical will, in his calm moments, admit the need of a Conservative opposition, as will the Conservative the need of a Radical opposition. The candid Socialist will be glad of a dash of Anarchism in his otherwise too rigid commonwealth. The imperialist, whose policy has brought about an immense increase of naval and military expenditure in England and a not very enviable state of things in South Africa, may well argue for the show at least of a different theory and practice, and may therefore contend with perfect sincerity for an anti-imperialist party, as being his true critics and opponents. If the other party is to take exactly the same line as your own, where will you get that criticism which every sane man must see is essential for the life of a

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free state? If both Liberal and Tory parties in England were to become imperialist in precisely the same degree, if the main ideas of the so-called Liberal imperialists were to be adopted by the Liberal party as a whole, no greater condition of danger for the country could be imagined. So far as foreign policy is concerned, serious criticism and opposition to possibly disastrous courses would cease to exist.

The English constitution consists in essence of party government, and it will undergo a revolution when party government is no more. It may not be a good system; from the point of view of logic and the reason it is not. But such as it is, it is there. Those who counsel the Liberal party to take up imperialism as the Tory party has taken it up, no matter what may be their intentions, are undermining the constitution. Nothing is more absurd than to say that you can all be of one mind in foreign relations and yet divide into parties in regard to domestic affairs. What are domestic affairs? Is finance? Surely. Yet finance is far more affected by foreign policy than by any home matters. English taxation is going steadily up; English reserve capital is going steadily down. How can it be pretended that this has nothing to do with imperialism, when every one knows that it is imperialism which has brought this about? How can the imperialist who approves the diplomatic and war policy quarrel with the financial result? *Inter arma silent leges.* How can the imperialist who knows that you cannot attend to more than one thing at a time complain at the entire neglect of the reforms at home which he professed to desire? He has chosen his lot, and he must be content. A Liberal, of all men, wishes to see the necessaries of life cheap for the masses. But the first outcome of imperialism, with its wars for empire, is to raise the price of the leading commodities of life; and with what reason shall he who supported this policy grumble at the inevitable consequences?

There is no real distinction between foreign and home questions, as imperialists pretend. They are all of a piece. Aristotle, who favored a vigorous domestic policy of state

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regulation, in order to produce an economic poise or balance in the commonwealth, also warned the ruler against aggressive foreign policy. He was right. You cannot separate the two. England can have the old policy of half a century ago, the policy of Cobden, of which peace was but a part, being connected with retrenchment and reform; she can have the policy of Mr. Chamberlain, with its "pegging out claims for posterity"; but she cannot have both at the same time. It is well, therefore, that England should have the two parties which represent these different ideals; but it is assuredly not well that one party should try to amalgamate with the other in foreign politics, while pretending to fight it in home affairs. Nay, it is impossible. Were the Liberal party to become imperialist in the full sense of the term, it would perish and another party would rise to take its place — and this would happen in the very nature of things. As Mr. Morley said at Oxford, the Socialists would step in to take the place of the real Liberal opposition, as has been the case both in Germany and in Belgium.

What is needed in party government is a real issue running through from top to bottom in public life — an issue which cannot be ignored or evaded; and it is exactly for lack of such an issue that the Liberal party in England is so crippled, so faint, so resourceless at this hour. It has for years ceased to live by principle. In Mr. Gladstone's later years it lived on a personality. Since he passed away it has not had even that to fall back on. Bankrupt of ideas; looking now this way, now that, for some means of help; afraid to utter anything which will be likely to rouse the ire of that master of the situation, "the average man;" with no intellectual basis, with no belief in its own fundamental creed, the Liberal party is but a sorry spectacle to-day. But there is one chance for it, and that chance lies in a course precisely opposite to that criticised here. Let the party take up a clear line of thought and action against the dominant imperialism of the hour, and it will revive. Many who will not quite agree with it will nevertheless welcome such an attitude, as giving a check to a tendency which is certainly

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full of risks and which may become highly dangerous. The Liberal domestic program is at present a mere tissue of words, and must remain so till the fever of imperialism has run its course. Therefore the Liberal party can do nothing in that sphere. But it can hold up to the nation some other political ideal than that which is now dominant; and if the arguments presented here are valid, it is not only its duty but also its interest to do so.

WILLIAM CLARKE.

LONDON, ENGLAND.

NOTE. — After the above article was accepted, but before it was put in type, we learned with profound sorrow of the death of Mr. Clarke, which occurred at Mostar, Herzegovina, May 10. That he would have found anything in the political conditions since he wrote to modify the views of the article, is doubtful. It has been deemed best to print it as he wrote it. — EDS.

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MONOPOLIES AND THE LAW.

IN dealing with trusts it might be expected that theory would be bold and practice conservative. In fact, however, actual law-making has gone to the extreme of boldness, while theory has steadily held to the more moderate way. Practice is now apparently about to take the latter course. The policy of the future is well in sight; and it involves changes in the present condition that are so moderate as almost to incur the suspicion of being a *laissez faire* course. Yet it is an effective policy for the regulation of trusts, and will do its work so well that it will stir up strong resistance, so that the execution of it will require all the energy which a people devoted to industrial freedom will be able to use.

In the making of new laws we shall do first what is most undeniably wise—that is, give protection to investors. When the public is invited to buy stocks and bonds of industrial companies, it needs to know what real property it is getting by its purchases; and it will find a way to make the needed facts accessible.

When, however, the investor shall have been, if not protected, at least placed where he can protect himself, the graver difficulties connected with the regulation of trusts will begin. It is not for the harm that they do to the men who own them, even though these men may pay too much for the ownership, that monopolies are dreaded. It is for the harm that they threaten to do to the public. Consumers are in danger, and so are all laborers who are not specially aided at the cost of consumers. The trust may pay its own operatives well; but it may close mills and force many employees into other occupations. It is there that the injury to labor is located. There are, indeed, four parties who have a common interest in curbing monopolies: namely, the independent producer, the consumer, the farmer and the unprotected laborer. The rival

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producer may be crushed and the consumer may be made to pay high prices for goods. The farmer, as a buyer of such goods, may be taxed on his consumption, and he may be made to take low prices for the raw materials that he has to sell. The laborer who is not tied in interest to the trust itself, by receiving a premium on ordinary wages, may suffer with the rest through a reduction of his pay. All this *may* happen; and it *will* happen, to the extent that these consolidations acquire the amount of monopolistic power which it is for their interest to gain.

The key to the solution of the grave problems that are thus presented lies in the fact that the independent producer is the natural protector of all the other threatened interests. If the trust cannot crush him, it can neither tax consumers through high prices of finished goods nor mulct farmers through low prices of raw materials; and it cannot depress the general rate of pay for labor. Goods will be produced at normal prices, and all who help to make them will get normal returns, so long as competition is kept alive.

It is not easy to keep competition in vigorous life. The great company has ways of clubbing the men who are bold enough to rival it. This is not done by the old and familiar plan of reducing costs and underbidding the inefficient producers. That is a part of the established order of things. The economic organism has become as efficient as it is because capable producers have survived and others have perished. The process has had its serious hardships. We have been appalled by the law that holds an inexorable fate over every employer who cannot get out of labor and capital as large a product as his rivals are getting; but for society as a whole there is gain coming from this. The hope of an endless increase of productive power — of a perpetual rise in the level of all economic life — lies in the continued action of this law of survival by which only the best servants of mankind are retained.

At present the situation is the reverse of this. The interests of the public itself are now threatened by the destruction

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of competing producers. This is because it is no longer by reason of inferior efficiency that they are in danger of being crushed. It is not the unfit, but the particularly fit, that are in danger of going to the wall. The competing power that threatens to destroy them depends, not on economy in production, but on special and unfair fighting powers that great size gives. The really efficient producer, the man who can make goods even more cheaply than the trust can make them, is now in peril. It is this man who must at all hazards be kept in the field. We, the people, must use the law to protect him, as he uses his economic power to protect us.

Now the first and easiest thing for us to do, in thus guarding our guardian, is to secure for him fair treatment by railroads. If the trust gets a rebate which he cannot get, it has him at its mercy. It may ruin him, even though he may be able to make goods more cheaply than the trust itself can make them. Moreover, it is the prohibition of pooling by the railroads themselves that subjects them to the temptation to make the discriminating charges. In a pool they would have no reason for trying to lure away from each other the traffic of the large shippers. Yet the toleration of pooling means the regulation of freight charges by the state. It has lately come about that the attempt to preserve competition among common carriers has gone far toward extinguishing it among manufacturers. Competing railroads, a struggle for the business of large producers, secret rebates to such producers, the extinction of small rivals and an approach to monopoly in many branches of production — this is the series of phenomena that we have recently witnessed. Railroads in pools, regulated charges and a fair field for the small producers — this is the alternative series; and it is the one that in the end we shall choose, unless we are driven to a much bolder course, the giving over of railroads to the government.

An exceptional functionary is the common carrier, and we shall be forced to deal with him as we shall not deal with others. His position is strategic, and we cannot long allow it to be used in a way that creates monopoly in the remainder of

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the economic field. Without pretending to deal adequately with the problems of transportation, I record the belief that the mode of solving them will not be through state ownership, but by state regulation. The type of regulation that the government is now trying to enforce is more difficult than another one would be, and this other one would actually meet the exigencies of our position. We want all producers treated fairly; but we are trying to make the carriers treat them thus, while we keep the carriers themselves under a great temptation to deal unfairly. It is the competition of railroads with each other — the effort to lure traffic from one another — that affords the chief incentive for secret rebates to the larger shippers. Let the competition end itself by means of pools, and you put an end to this temptation. There is then no longer anything to be made by giving such rebates. We must now protect the public against charges that in an all-around way may be too high; but we can probably do this more easily than under the present plan we can prevent discriminations. If all railroads were pooling their earnings, they would want to make their rates high and the public would want to keep them low. The issue would be clearly drawn; and, though it might take a supreme effort to get the right law enacted and enforced, the evasion of the law would be less easy than is the evasion of a law requiring competing lines to treat all shippers alike. The law can protect the whole public against a generally high scale of charges more easily than it can protect a small shipper against special favors accorded to his powerful rival.

It may be taken for granted that the unequal treatment of different shippers is an evil so great that, sooner or later, it must and will be suppressed. When that is done, we shall find ourselves at the beginning of more serious work. There will remain in the hands of the trust weapons by means of which it can destroy its rivals; and these cannot so easily be taken away. If the solution of the railroad problem is hard, the solution of the remaining part of the problem of monopoly is still harder; but it is not beyond the power of the people, if that power be directed with intelligence.

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There are three ways, all now well known, in which a trust can crush an efficient competitor. The rival may be producing goods cheaply, and he may be the man who normally ought to survive; and yet the trust may ruin him. It may make use of the "factors' agreement," by which it gives a special rebate to those merchants who handle only its own goods. It may resort, secondly, to the local cutting of prices, whereby the trust enters its rival's special territory and sells goods there below the cost of producing them, while sustaining itself by means of higher prices charged in other portions of its field. Again, the trust may depend on the cutting of the price of some one variety of goods which a rival producer makes, in order to ruin him, while it sustains itself by means of the high prices which it gets for goods of other varieties. These three things make the position of a competitor perilous. If the trust were prevented from resorting to them, competition, real or potential, would not only protect the public but would ensure to it a large share of the benefit that comes from economies in production. Independent mills would continue to be built and would be equipped with machinery so efficient that a trust would have to be forever on the alert in keeping abreast with them. There is no conceivable condition in which both consumers and laborers would find their interests so well guarded as one in which trusts should be allowed to exist without let or hindrance, but in which the prices of their goods should be forced continually downward by the necessity for meeting actual or possible rivalry.

It is not difficult to see what is needed in order to make the independent competitors thus secure. In a fair contest for survival they can protect themselves. In such a struggle everything depends on mere efficiency in production, and they may well be subjected to the full force of it. When economy in production no longer saves them, it is time for the state to intervene; and it needs to do this, if it would carry out the very end for which it was originally established — the protection of property itself, by the suppression of refined forms of robbery.

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The factors' agreement, the local cut in prices and the illegitimate breaking of a general scale of prices must, then, in some way be stopped. If laws were self-executing, it would be easy to stop them. These unfair acts could all be defined and forbidden, but not many laws are more difficult of enforcement than these would be. To forbid the factors' agreement is virtually to order the trust to sell goods of any kind to any customer who tenders payment for them, and the order might remain a dead letter. Prohibiting local discriminations in prices might have no better result. You may, indeed, ordain, under severe penalties, that the price of a particular article shall be uniform to purchasers in every part of the United States. The costs of transportation should, of course, be taken into account, and the distant purchaser should pay a larger freight charge than the near one; but the price at the point of shipment should be uniform for both. A difficulty will at once arise from the fact that merchandise seldom has those qualities which, in connection with money, have been termed homogeneity and cognizability. The goods vary in quality, and it is not always possible for a purchaser to tell of what quality they are. If a trust wished to crush a competitor in Minnesota, by selling within that state certain goods at less than it cost to make them, it could perhaps accomplish its purpose, in spite of such a law as is here suggested, by making a special type of goods and offering it exclusively in the market of Minnesota. It might create an entirely new brand of goods and offer it nowhere except in that one state; and there it might offer it at a price which no competitor could meet.

It would, indeed, be true that, under the supposed law, the trust would be obliged to sell goods of this special brand to consumers in other states at the same price at which it sold them in Minnesota; and, if orders were to come promptly and freely from the other states, its attempt to ruin its competitor might prove costly and unsuccessful. Sooner or later the orders would doubtless come, and the strategy of the trust would no longer serve its purpose; but an independent producer might not hold out long enough to get the relief thus

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afforded. During an interval the trust would secure high prices in every state but one, and in that single state it could afford to stand a loss for the sake of crushing its rival.

Even this difficulty is not as great as is that encountered in the effort to suppress the breaking of a scale of prices and the making of a ruinous rate on a single article that figures in the scale. The independent mill may be sending its goods all over the country, but it may make goods of only one kind. How shall we prevent the trust from temporarily selling at a ruinous rate goods of this one kind?

It is true, indeed, that this particular club, which would be very effective in braining a single small competitor, would be of no use against a combination of small producers making, in their various shops, as complete an assortment of goods as is made by the attacking trust itself. The cut on one article made by the big corporation could be met by a similar cut on that same article made in one of the shops controlled by the pool; and this affords a reason for thinking that the permanent policy of this country will not be hostile to such pools. In foreign countries they are treated with toleration, if not with friendliness; and for defensive purposes in wars against vast corporations they may have a function to perform here.

If it could be proved that a reduction in the price of some one type of goods was not justified by changes in the conditions of production, this would be an evidence that the cut was made for a predatory purpose. If the price of the particular grade of goods were first put down and then put up again, and if rivals were crushed in the interval, this would be evidence that the purpose of the cut was illegitimate. Sharp enough penalties for such conduct enforced in a few cases might make the policy too dangerous to be practiced. It is not to be admitted that statutes for the suppression of wars of extermination such as a trust is now able to wage against its rivals are powerless. They are difficult of enforcement. But if the people were living always in a heroic mood and maintaining a fierce watchfulness over their officers, the thing desired would certainly be done; and it may be done in any case.

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There is a better thing to be done. Statutes are not our sole reliance. The American lawyer may gauge his skill by his success in "driving a coach and four through them." Where statutes are the only reliance, technicalities are in favor of the criminal, and lawyers secure immunity for him. The most efficient action that has thus far been taken in curbing the power of trusts has been taken under the common law. It forbids monopoly, and there is no possible danger that this prohibition will ever be abandoned. To tolerate a monopoly in private hands is to vest in a few persons the power to tax the rest of the community; and this will never be permitted. The thing to be done is to discover what is a monopoly and to decide what shall be done with it where it is identified. At present there rests upon the courts the duty of determining in what cases a monopoly actually exists, and the determination has its difficulties. How shall a monopolistic corporation be defined? Is it the only corporation from which an article can be procured? If so, there are scarcely any such monopolies now in existence. In nearly every industry there is a fringe of independent life remaining. The trusts take the centre of the field and let a few small rivals operate on the outskirts. If these are in the trust's power and are compelled to do its bidding, the monopoly is essentially complete. If, then, new and strong competitors are precluded from appearing, the position of the monopoly is secure. It has nothing to fear on the economic side. Just here, therefore, its danger on the legal side ought to begin; for it is the banishing not merely of the actual, but of the potential, competitor that makes it a monopoly. If the law will take it effectively in hand at the point where competition of the potential kind ceases to restrain it, nothing more is needed. Let us, then, enforce the common law as it stands. What is to be desired is an understanding of potential competition as a regulator and of the means used to destroy its power, with a rigorous use of the legal force, wherever these means are employed.

There are some economic distinctions that will have to win recognition before the course of legal proceeding in the case

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of monopolies can be clear. To dominate weak rivals and to prevent strong ones from appearing, is to perform the act and to take on the character of a monopoly. The large and efficient mill that has not yet been built is a regulator of prices in advance of its existence. If the way is quite open for it to appear, the trust cannot long keep prices at a high level, and cannot put them there at all with safety for itself. The test of the question whether the great corporation is or is not a true monopoly, is applied by determining whether the way is or is not open for the competitor to appear. If the new mill can be built without danger that the trust will close it by means of some of the illegitimate practices above described, the great corporation is a beneficent institution. It will produce goods economically, develop an export business and accumulate capital in a degree that will go far toward giving to our country financial dominance in the world. If the rival mill is terrorized in advance and precluded from appearing, the trust has all the evil traits that the term "monopoly" implies. It is a monster in size, in either case; but the difference between being a docile servant of man and a predatory beast is made by a mere potentiality. Can the rival safely appear or can he not? is the test question in the case.

Size, then, does not make a monopoly. Conceivably a corporation might make all the goods of a given class and yet be held completely in check by merely potential competitors. Practically, in some departments of industry, an approach to this condition now exists and makes the state of society a startling one, but still tolerable. An evil power that goes with size may not be used. When it is used, the predatory work begins. Monopoly is that monopoly does; and the typical act which identifies the unlawful power is the crushing of rivals by the means above described.

Advancing rapidly is the time when to every highly developed state there will be presented a sharp practical alternative. It is between keeping alive the power of potential competition and not doing so; and this means a choice between putting its citizens actually into the power of the "octopus" of popular

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rhetoric and keeping them free. Nothing but a competitive power of some kind can take from monster-like consolidations of capital their power to do evil, while leaving to them both their power to do good and a motive for exercising it. If it is certain that the competitor will promptly materialize when he is needed, the trust is eminently useful; but as this certainty shades off into a bare probability or even into an improbability, the evil qualities of the combination grow and the good ones gradually vanish. Size without predatory power, then, makes a corporation beneficent; but size with this evil endowment makes it a menace to freedom; and the power to work harm depends on the special practices that have been mentioned — namely, the favors exacted from railroads, which we assume will before long be stopped, the local cutting of the prices of goods, the breaking of a scale of prices and the type of boycotting termed the "factors' agreement," which, as we claim, must be prevented. By these means the trust can often crush a rival; and the prospect that it will resort to them often terrorizes the rival in advance and prevents him from appearing in the field. The trust has but to brandish its clubs when the rival producer is taking his preliminary survey of the territory. It will not need to use them, for the rival will vanish.

There are, then, at least two potentialities that have to be taken into account, if the present situation is to be understood and if a future policy is to be wisely determined. If new competition is sure to spring up in case prices are raised, they will not be raised. They will continue to be held down by a possible producing agent, and not by one that is actually present and acting. This is potentiality number one. It may be that the new competitor will not dare to appear, because the trust will use its clubs in case he does so. This is potentiality number two, which neutralizes the first one and leaves the monopoly unchecked. The certainty that a competitor will be ruined if he appears takes away all probability of his appearing; and this probability is the element which naturally affords the most important check on the action of the monopolistic company. What is wanted is a third potentiality such as law only can

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create. It needs to be made sure that, if the trust uses its clubs on the competitor, the law will use its own clubs on the trust. This will preclude the crushing of the new producers. The second potentiality, the bad one in the case, will then be removed, and the first and good one will be restored. If the trust has much to dread from the civil power in case it ruins competitors unfairly, it will give them a fair field. This is all that they need, and with it ensured they can be trusted to appear promptly whenever prices are raised to an extortionate level. But such a rise will not take place. The potential competitor will protect the public from extortion, because a potency residing in the law annihilates the trust's power to destroy him. From every point of approach we are led to the conclusion that law must disarm the trusts. It must take away the weapons which are available only for evil. By a heroic effort the railroad problem must first be solved, and fair treatment for all shippers must be secured. Then factors' agreements, the local cutting of prices and the predatory breaking of a scale of prices must be forbidden, and there must be a real force behind the prohibition.

The difficulties in the way of such a policy have not been denied. Are they insurmountable? Some thoughtful persons have said, yes; but this verdict has resulted from considering merely the power of statutes, the ease of evading them and the skill of the technical lawyer in securing immunity for those who evade them. The case does not, however, depend on statutes. There is the never-to-be-abandoned principle of the common law that a monopoly is contrary to the public interest and definitely outlawed. There is the fact that mere size affords presumptive evidence that a corporation is liable to this condemnation. There is the evidence to be had from the raising of prices and the shutting down of mills. There is needed further evidence from the treatment of rivals. It is not impossible to discover when a trust is clubbing its competitors in one or more of the ways that have been described. Forbid such practices and prescribe as severe penalties as you will for resorting to them. Let the statutes have every chance

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to suppress them. Make the local cutting of prices, the breaking of a scale of prices for a predatory end and the factors' agreement illegal and punishable, and do what you can to secure the execution of the law. In doing this you will not have exhausted the power of the state, and indeed you will not have drawn on it in the most available way; for there will remain the common-law demand for the repression of monopoly. On the courts there will continue to rest the duty of detecting the monopoly and pronouncing the condemnation; and, if the evil practices continue, the monopolies will exist and invite the court's decree.

The actual present situation is one in which a hundred great corporations would become unrestrained monopolies and liable to the fullest condemnation, if it were not for a certain amount of potential competition. But the extent of the influence that this kind of competition exerts is insufficient. Within limits a trust may raise its prices unduly, because the competitor cannot be drawn into the field except by a large inducement. He must have a prospect of gain that will offset a peril. Society can count on his coming when it pays prices that are high enough to lure him into the danger, but not before. Up to this point the trust can have its way. It is a true monopoly with limited powers, and only because of the limitation does the common law fail vigorously to assert itself. We are establishing in the body economic a condition that resembles what is induced in an individual body by taking small quantities of a poison against which the system revolts. As the medical term expresses it, we are "establishing a tolerance" of monopoly. We are reconciling ourselves to a limited exercise of its power for evil, in view of a certain power that it has for good. There is peril for the state in this course, which will strengthen decisively the growing demand that the government shall take industries into its own hands and manage them for the public welfare.

What is now needed is to make each one of the practices by which competitors are terrorized a legal evidence of the existence of a monopolistic power and to condemn, under the

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common law, any corporation that shall afford this evidence. The procedure should be made so sure that the competing producer will always dare to come when he is wanted. He will not be safe, if he cannot produce goods cheaply; but if he can do this, his continuance will be assured. The law will take in hand the power that would treat him unfairly. The clubbing of independent producers is a thing that can be detected, and it is not impossible directly to punish it, if the people will show determination; but it is worth more to use it as a decisive addition to the mass of evidence which, under the common law, can convict the monopoly. The duty of convicting it rests now on the courts, and accordingly there rests on the legislatures the duty of making the conviction practicable. It is the privilege of the people to hold the legislatures to this duty.

JOHN B. CLARK.

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THE PRINCIPLES OF ECONOMIC GEOGRAPHY.

IN a previous article[1] I endeavored to connect economics and geography in a consistent system and so to establish the study of economic geography. It is the purpose of the present paper to formulate the fundamental principles of the subject.

According to the geographic scheme set forth before, the descriptive study of the earth is composed of four divisions: Mathematical Geography, which deals with the earth as a whole, exhibits its nature and determines its relation to the other members of the solar system; Physical Geography, which describes the superficial properties of the globe, its rigid lithosphere, its mobile hydrosphere and its circumambient atmosphere; Biogeography, which recognizes a vital purpose in nature and regards the earth as adapted to the support of life; and Economic Geography, which recognizes a utilitarian purpose in nature and considers the world as fitted for the ascendency of civilization. Each of these descriptive studies is guided in its course by an antecedent science and describes a separate series of phenomena. Mathematical geography starts from astronomy and describes universal phenomena; physical geography starts from geology and describes inorganic phenomena; biogeography starts from biology and describes organic phenomena; and economic geography starts from economics and describes superorganic phenomena.

The points of departure from which the several descriptive studies proceed are perfectly distinct. They all deal with the same general subject-matter, however; and, as the last section of each division overlaps the first section of the next succeeding division, the various lines of geographic investigation are apt to become confused. Where the junctions are effected between the divisions of geography, care must, therefore, be taken to discriminate between the several descriptive studies.

[1] POLITICAL SCIENCE QUARTERLY for March, 1901, p. 79.

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Thus, where the descriptive study of universal phenomena is succeeded by the descriptive study of inorganic phenomena, it is necessary to note that the point of view changes from astronomy to geology and the mathematical principle is supplemented by the physico-chemical principle. So, in the same way, where the descriptive study of inorganic phenomena is succeeded by the descriptive study of organic phenomena, the point of view changes again from geology to biology and the physico-chemical principle is supplemented by the physiological principle.

These earlier distinctions have long since been definitely established, so there is no difficulty in following the line of geographic investigation to this point. But where biogeography, the descriptive study of organic phenomena, overlaps economic geography, the descriptive study of superorganic phenomena, confusion still prevails. The transition from biology to economics has not been carefully enough determined; hence, in passing over from the physiological to the psychic principle the continuity appears to be broken. From the lack of requisite discrimination, confusion has accumulated at this point. Facts which should be explained by economics are constantly being referred to biology, and *vice versa*. To cite a single instance: racial variations, which are the result of the biological process, are every day identified with culture distinctions, which are due to the operation of economic agencies. Paleontologists, for example, take round-headed people and polished stone implements as natural concomitants of each other, apparently without realizing that there is no necessary connection between the two, as one is an organic, the other a superorganic phenomenon. For the same reason the much-mooted Aryan question remains hopelessly involved. In common parlance, likewise, we speak of the inferiority of the Negro race and the superiority of the Teutons, Celts, Slavs or Anglo-Saxons (depending usually upon the nationality of the speaker), as if each ethnic stock were endowed with a genius of its own. Since such confusion exists, careful discrimination is required. In formulating the fundamental principles of

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economic geography, I shall, therefore, consider the study in connection with biogeography and endeavor to disentangle the two lines of investigation.

Biogeography, the descriptive study of organic phenomena, derives its point of departure and dynamic principle from the science of biology; economic geography, the descriptive study of superorganic phenomena, derives its point of departure and dynamic principle from the science of economics. To discriminate between the descriptive studies, it will accordingly be necessary to distinguish between the antecedent sciences.

Variability is the point of departure for the explanation of organic evolution. By variability biologists mean the susceptibility to modification inherent in organic life, "that plasticity or modifiability of any organism, in virtue of which an animal or a plant may change in form, structure, function, size, color or other character, lose some character or acquire another, and thus deviate from its parent form." This tendency of organisms to become unlike their parents is in the first instance an intrinsic quality and, like other natural attributes, transmissible from generation to generation. But, though originally intrinsic, variability is called into play only by extrinsic conditions. In this sense, therefore, variability, or the tendency to vary under environmental conditions, may be regarded as the counteractive of heredity, or the tendency to breed true. The former is the innovative, the latter the conservative, factor of organic evolution.

Looking over the whole range of organic evolution, among the countless cases of variation that have resulted from the interaction of variability and environment, the general tendency appears to be toward the preservation of the more useful and the extinction of the less useful or useless characters. This is due to the fact that selection has been operative all along the line, eliminating the unfit or ill-adapted from the struggle for existence and allowing only the fittest or best adapted to survive. The more plastic the organism, the greater the possibility of variation; the more favorable the environment, the higher the type of plant or animal evolved. Organic evolution,

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or the survival of the fittest forms of life, may, therefore, be regarded as the result of the selection of such variations as adapt the successful organisms to their environments. Through selection, accordingly, the course of organic evolution is characterized by improvement.

Utility is the point of departure for the study of superorganic development. By utility, economists understand "the quality of satisfying human wants — the power to change a man's subjective condition from a lower to a higher degree of happiness." Now, utility is neither an attribute of human nature nor a property of outer nature, but an intermediate quality or, as a recent writer has aptly expressed it, "the qualitative weal relation of nature to man." The concept should accordingly be approached from two sides — from the point of view of demand, which emanates from human nature, and from the standpoint of supply, which proceeds from outer nature.

Demand arises from the fact that human beings are impelled to action by a desire to obtain pleasure, and pleasure in the economic sense is synonymous with the satisfaction of wants. So demand, emanating from human nature, may be said to tend directly toward utility. Supply, on the other hand, arises from the fact that the earth provides pleasure-giving products, which, because they satisfy men's wants, are in economic terminology called goods. Supply, proceeding from outer nature, cannot, however, on this account be said to tend directly toward utility, since in the large majority of cases the intervention of man is necessary to fashion natural resources into goods. The economic sequence runs, accordingly, as follows: demand tends toward utility, utility leads to utilization, and utilization results in supply.

Looking over the whole range of superorganic development, the general tendency appears to be toward the augmentation of utility. During the course of man's ascent from savagery to civilization, the quality of satisfying human wants has increased enormously, with the result that the subjective condition of civilized man has been raised to a far higher degree of happiness than that of the savage. The meliorative motive

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emanates in this instance from within, the initiative toward superorganic development being derived from man's desire to satisfy his wants. To determine the dynamics of civilization it is, consequently, necessary to start once more from the subjective side and proceed from demand toward utility.

Analysis shows that human wants are in one sense satiable and in another sense insatiable. Quantitatively considered, human wants are satiable. That is to say, if consumption be restricted to the same sort of goods, demand falls off with successive increments of supply, satisfaction diminishes and utility describes a declining curve. Qualitatively regarded, however, human wants are insatiable. That is to say, if the supply be judiciously varied, if instead of goods of the same sort a variety of goods be offered, there is no such falling off in demand; for the consumption of complementary goods affords continued satisfaction, and the declining scale of utility may be maintained in this way almost indefinitely above the point of satiety. Since human nature is so constituted, the pursuit of pleasure means more to man than the gratification of a recurring set of desires; it involves the satisfaction of an expanding series of wants. Thus, in tending toward utility, demand makes for variety; in seeking to satisfy their qualitative wants, men strive to extend the scope of their consumption.

On passing over from the subjective to the objective side, it becomes at once apparent that man's desire to extend the scope of his consumption is met by obstacles arising from the character of the environment, which can be overcome only by the exertion of energy and the exercise of ingenuity on his part. Outer nature, it is true, affords a few free goods, but by no means enough to satisfy men's qualitative wants. For the rest, raw materials must be transformed into pleasure-giving products by artificial processes. To this end implements and organization are necessary. In order to extend the scope of his consumption, man is, consequently, compelled to improve his means and methods of production.

In a word, the augmentation of utility involves a corresponding increase of utilization; so that between man's desire to consume

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and his capacity to produce there is constant interaction which makes for industrial progress, or the gradual ascendency of civilization over savagery. Superorganic development may consequently be regarded as the outcome of the economic sequence dynamically applied: expanding demand tends toward the augmentation of utility, the augmentation of utility necessitates increasing utilization and increasing utilization results in the differentiation of supply. Through the augmentation of utility and the corresponding increase of utilization, the course of superorganic development is, accordingly, characterized by improvement.

From what has been said it is evident that the principles of organic evolution and those of superorganic development are essentially different. As explained by biology, organic evolution is a passive process, calling for no initiative on the part of the organism beyond the instinctive impulse to the preservation of self and kind; for, though variability is an intrinsic attribute, it operates only from generation to generation and cannot, therefore, be said to exercise any conscious influence upon individual life. As explained by economics, superorganic development is, on the contrary, an active process requiring individual initiative; for the augmentation of utility implies on man's part a conscious desire to extend the scope of his consumption and a recognized ability to improve his means and methods of production. Variability, the point of departure for organic evolution, means, in short, simply susceptibility to modification; whereas utility, the point of departure for superorganic development, implies capability of melioration. Thus, though organic evolution and superorganic development are both characterized by improvement, progress is differently determined along the two lines: in the former case the meliorative motive emanates from without and the dynamic factor is negative in character; in the latter case the meliorative motive emanates from within and the dynamic element is positive in character.

Having distinguished between the antecedent sciences, it is a comparatively simple matter to discriminate between the

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corresponding descriptive studies. Biogeography starts from the physiological principle of variability, recognizes a vital purpose in nature and regards the earth as adapted to the support of life. Economic geography proceeds from the psychic principle of utility, recognizes a utilitarian purpose in nature and considers the world as fitted for the ascendency of civilization. The influence of the environment upon organic evolution constitutes the subject-matter of the former; the effect of the environment upon superorganic development constitutes the subject-matter of the latter.

From the theoretical point of view, therefore, biogeography and economic geography are readily distinguishable, since the two descriptive studies start from distinct points of departure, proceed upon entirely different principles and describe separate series of phenomena. To a certain extent, however, the subject-matter of biogeography is similar to that of economic geography, as both descriptive studies describe the influence of the environment upon man, the former from the organic, the latter from the superorganic, point of view. As a result, confusion is apt to arise along the line of cleavage, where the two descriptive studies overlap. For the sake of clearness, therefore, it will be advisable to trace the course of biogeography through its several sections and separate its subject-matter from that of economic geography.

Assuming variability to be inherent in all organisms and presuming the process of selection to be generally operative, biogeography describes the effects of the environment in establishing the long series of variations that have occurred in the course of organic evolution. To facilitate the detailed study of these variations, biogeography is further subdivided into three sections: botanical geography, which describes the variations of plant life; zoögeography, which describes the variations of animal life; and anthropogeography, which describes the variations of human life. There is no danger of the variations of plant and animal becoming confused (except perhaps by way of analogy) with the distinctions arising among mankind. We may pass over the first two sections of the descriptive study,

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therefore, and confine ourselves to a consideration of the third. Anthropogeography describes the effects of the environment in constituting the organic variations that have occurred in the course of human development. It will not be necessary at this juncture to describe these modifications of the human organism in detail. Suffice it to say that the characters thus constituted are the outcome of environmental agencies operating upon the attribute of variability inherent in the anthropoid line. Being organic in character, these modifications are manifested, accordingly, in the morphological type of man, in functional and structural differences, such as the shape of the skull, the pigment of the skin, the texture of the hair, the color of the eyes, stature, physique and the like.

While the environment was acting in this way upon man, constituting organic characters, man was at the same time reacting upon the environment, establishing superorganic standards. As human beings became passively adapted to their surroundings, they also actively endeavored to adapt their surroundings to themselves. Their object was to satisfy as many of their wants as possible and so to make the most of their situation on earth. The extent of such satisfaction depended in the last instance upon the nature of the environment or, more particularly, upon the character of the goods supply. Outer nature is not uniform in this respect, the natural resources of no two regions being exactly the same. As a result, the various environments occupied by man offered different series of potential utilities and required different processes of utilization. The inhabitants of diverse regions of the earth, seeking to satisfy their qualitative wants, came, consequently, in the course of time, to differ from each other in the scope of their consumption and in their means and methods of production. In this way superorganic distinctions were established. It is not necessary at this juncture to describe these differences in detail. Suffice it to say that the distinctions in question are the outcome of environmental agencies operating upon the quality of utility cognizable by mankind. Being superorganic in character, these distinctions are, accordingly, manifested in

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men's manner of life, in differences of customs, standards of culture, degrees of civilization and the like.

Human progress is, consequently, characterized by two sets of distinctions, one arising from the action of the environment upon the attribute of variability inherent in the anthropoid line, the other derived from the influence of the environment upon the quality of utility cognizable by mankind. The former, as has been said, constitute the subject-matter of anthropogeography; the latter should be set apart as the subject-matter of economic geography. Thus, though anthropogeography and economic geography both deal with the effects of the environment upon man, the two descriptive studies still describe distinct series of phenomena. Their subject-matter seems similar, because organic variations and superorganic distinctions coincide along the course of human development. The coincidence is entirely superficial, however, so that by careful discrimination confusion can easily be avoided.

The particular instances of differentiation are so manifold that little more can be said from the theoretical side. To determine the actual course of human progress, the effects of the environment in differentiating the several races of man, and in constituting the various schemes of civilization, should be considered historically. As an aid to subsequent investigation along these lines, it may be advisable, however, before closing, even at the risk of repetition, to contrast the principles of organic and superorganic differentiation in a series of antitheses.

Organic variations are due to such general geographic differences as affect the physical structure and so modify the morphological type of man; superorganic distinctions are due to such particular geographic differences as diversify the goods supply and make men modify their manners of life accordingly. The former arise from the direct influence of the environment upon the anatomy of man; the latter arise from the indirect influence of the environment upon the activities of man. In constituting organic variations, the environment

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acts unconsciously upon human beings; in establishing superorganic distinctions, human beings react consciously upon the environment. The organic variations occurring in the course of human development may, consequently, be regarded as the accomplishment of that which variability permits, environment requires and selection directs; whereas the superorganic distinctions arising in the course of human development should be considered as the outcome of that which utility suggests, environment allows and utilization determines.

Taking these antitheses as guides, the two descriptive studies of human development may be discriminated, in conclusion, as follows: Assuming variability to be inherent in the anthropoid line, and presuming the process of selection to be operative, anthropogeography describes the effects of the environment in establishing the organic variations that have occurred in the course of human development. Taking utility to be the determinant of the economic activities of man, and supposing individuals to be impelled by the pressure of their expanding wants to utilize natural resources, economic geography describes the effects of the environment in constituting the superorganic distinctions characteristic of human development.

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THE DECISIONS OF THE SUPREME COURT IN THE INSULAR CASES.

FORTY-FOUR years ago the upholders of domestic slavery were jubilant over a decision of the Supreme Court of the United States, which they thought established the peculiar institution upon an unshakable foundation and intrenched it impregnably against the attacks of religion, ethics or politics. They thought that the decision went much farther than it actually did; and they took but little notice of the two powerful dissenting opinions, which shattered the reasoning of the majority to atoms and opened the way for an appeal of the great question to the people, who reversed the judgment of the court and washed away the sin of it in the blood of both the righteous and the unrighteous.

Likewise, to-day the upholders of colonial bondage are revelling over the decision in one of the insular cases, that of Downes *vs.* Bidwell. They also seem to think that the decision goes much farther than it actually does, and that it makes the government of the United States absolute and unlimited in our insular possessions. And they, too, appear not to have noticed the powerful dissenting opinion of the four most important members of the court, which has opened the way for the appeal of this great question — the most momentous, next to that of domestic slavery, in our history — to the people, who will solve it rightly in the end at any cost.

To prepare the ground for an intelligent discussion of these decisions, and of the reasoning of the court leading to them, the first and most important step is to determine, if we can, just what has been decided and the reasons therefor; and this paper will be devoted exclusively to that purpose.

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I. *The De Lima Case.*

The case whose decision came first chronologically, and which seems thus to have been in some sense regarded as the foundation for all the others, was that of De Lima *et al. vs.* Bidwell. The question here involved, expressed in a single sentence, was as to the power of the United States government to continue to collect the ordinary duties on merchandise from foreign countries upon the like merchandise coming from Porto Rico into the ports of the United States, after the establishment of the sovereignty of the United States in and over Porto Rico and the assumption by the United States of government and jurisdiction therein and thereover. It is true that there was a preliminary question of practice, which was settled by the decision. The judgment upon this point was that the board of general appraisers, established by the Customs Administrative Act of June 10, 1890, and vested with final jurisdiction over appeals from the decisions of the collectors "as to the rate and amount of the duties chargeable upon imported merchandise," does not have jurisdiction in suits and controversies where the question to be determined is whether the article affected is or is not an imported article. As this last was the question in the De Lima case, the court decided that the action was properly brought in the regular courts and could not be properly brought before the board of general appraisers.

Proceeding, then, to the consideration of the main question, — the question as to whether the merchandise brought into the port of New York from Porto Rico, after the treaty of cession had been duly ratified by both Spain and the United States and after Porto Rico had passed under the sovereignty of the United States and the jurisdiction of the United States government, was imported merchandise, — the majority of the court held that the decision upon this point turned upon the question whether Porto Rico was at the time a foreign country to, or a domestic territory of, the United States. If a foreign country to the United States, the merchandise was imported and was subject to the duties under the general customs tariff. If, on the other

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hand, Porto Rico had become a domestic territory of the United States, then the merchandise was not imported and was not subject to the duties under the customs tariff, since this law expressly confined the levy of such duties to merchandise brought into the ports of the United States from foreign countries.

The court then held, by a majority of five to four, — the Chief Justice and Justices Harlan, Brewer, Brown and Peckham constituting the majority, while Justices Gray, White, Shiras and McKenna constituted the minority, — that by the establishment of the permanent sovereignty of the United States and the jurisdiction of the United States government over Porto Rico, the latter ceased in all respects to be a foreign country to the United States and became for all purposes a domestic territory of the United States.

This proposition appeared to the majority so true as to be almost axiomatic. They said that, were the question presented to them as an original question, they would be impelled to this conclusion simply from the considerations that a treaty is by the constitution expressly made law of the land, on an exact equality with a statute of Congress, and that it is a plain logical impossibility for a territory to be at the same time both foreign and domestic. That is, they made the permanent establishment of sovereignty, dominion and jurisdiction the test in determining whether a territory is foreign or domestic, and they held that when these have been established the territory concerned is entirely domestic and can be in no respects foreign. They asserted, however, that this was no new question, but that it had already been decided by the court in accordance with their view and, as so decided, was the principle of law which had controlled the practice of the government. They conceded that the practice of the government for a short time in the years 1803 and 1804, in dealing with Louisiana territory, had followed a different theory and that a dictum in the case of Fleming *vs.* Page, decided in the year 1850, indicated a different view; but they held that the decision in the case of Cross *vs.* Harrison, pronounced in the year 1854, overruled the dictum in Fleming

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vs. Page, and fixed firmly the law and the practice which has been followed uniformly from that day to this — namely, that a district ceded to and in the possession of the United States is a domestic territory of the United States in all respects and does not remain a foreign country for any purpose.

Upon the basis of this principle, the court declared that the duties levied by Collector Bidwell on merchandise brought by Mr. De Lima from Porto Rico into the port of New York in the autumn of 1899 were illegally exacted and that Mr. De Lima was entitled to recover the sums paid.

In dissenting from this judgment and the reasoning leading up to it, the four Justices, McKenna, Shiras, White and Gray, were divided, the first three uniting in one opinion presented by Mr. Justice McKenna, while Mr. Justice Gray offered his dissent and the reasons therefor separately.

Justices McKenna, Shiras and White held that in the political system and public law of the United States a territory or district, although under the sovereignty and permanent jurisdiction of the United States, may be foreign territory for some purposes and, at the same time, domestic for others — or rather, as expressed in their own words, may occupy "a relation to the United States between that of being a foreign country absolutely and of being domestic territory absolutely"; and they declared that Porto Rico stood, and still stands, in that relation. They did not undertake to establish logically the concept of this something between foreign and domestic territory in the political system of the United States, and they did not cite any clause of the Constitution of the United States providing for its existence; but they sought to prove from the practice of the government and from the decisions of the supreme court that it could exist and had existed, and that the law and practice in respect to it treated it as a country foreign to the United States, in so far as the customs laws of the United States were concerned, until Congress should, by establishing United States customs houses and collectors in it, make it domestic. The practice of the administration during parts of the years 1803 and 1804, in collecting duties on merchandise passing from

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Louisiana territory into the other parts of the United States, certainly supported the contention that there might be territory in the political system of the United States which stood in this mixed relation of foreign and domestic to the rest of the country, and the dissenting justices strenuously asserted that if they could show a single instance they had won their whole contention.

They then undertook to show that the decision in the case of The United States *vs.* Rice, pronounced in the year 1819, and that in the case of Fleming *vs.* Page, pronounced in the year 1850, rested upon the principle that a territory or district is foreign to the United States, from the point of view of the customs laws of the United States, if the Congress of the United States has not established customs houses and collectors in such territory or district. The first case turned upon the right of the United States government to collect duties on merchandise that had been brought into the port of Castine, Maine, while occupied by the British during the War of 1812; and the second turned upon the power of the United States government to collect duties on merchandise brought into Philadelphia from Tampico, Mexico, during the period of the Mexican war when Tampico was in the military possession of the United States. The decision in the first case was against the right of the United States government to collect such duties, while that in the second case sustained this right; and the dissenting opinion in the De Lima case, which we are now considering, declares that the point of agreement in the two cases was the absence of the instrumentalities of the United States customs laws. "At Castine" they "had been divested; at Tampico they had not been invested." As we have seen, this part of the opinion in Fleming *vs.* Page was called by the majority of the court, in the case we are considering, the dictum. On the other hand, the dissenting opinions hold it to have been the ground of the decision and therefore a part of it.

Finally, the justices uniting in this dissenting opinion undertake so to interpret the decision in Cross *vs.* Harrison as to put it largely, if not entirely, out of the argument. They

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hold that the war tariff imposed by the president on merchandise passing into California from foreign states, at the time of the military possession of California, in 1847 and 1848, by the United States, was not withdrawn by the mere fact of the cession of California to the United States, but by the formal act of the president through his agent in California, the military governor, Colonel Mason, who so soon as he received the news of the ratification of the treaty of cession withdrew the president's war tariff and put the regular Congressional tariff in force. They evidently consider that the president acted in this with full discretion—that is, that he was under no constitutional obligation to withdraw his tariff and put the general Congressional tariff in force so soon as the cession was complete. They also contend that a distinction must be made between the effect of the treaty ceding California and that ceding Porto Rico, in that the first proceeded upon the principle of the rectification of the boundaries of the United States, while the last was an outright transfer. And they hold, finally, that the treaty ceding Porto Rico itself provides against the incorporation of Porto Rico into the United States by virtue of the cession merely, in the clause which reserves to Congress the power to fix the political status and civil rights of the inhabitants of Porto Rico. They evidently had no appreciation of the view of the majority, that immediately upon the completion of the cession by ratification of the treaty the Constitution of the United States fixes the civil status of the inhabitants of the ceded territory, and that any provisions of the treaty to the contrary are null and void, while the cession itself is perfectly valid. They say: "Assuredly the treaty cannot have an automatic force contrary to its terms. That is, it cannot be contended that the automatic force of the treaty is greater than the force of the treaty itself." This is a clever sentence from a rhetorical point of view, but it does not answer in the remotest manner, or controvert in the slightest degree, the proposition of the majority of the court, that the cession and all parts of the treaty not held by the court to be in conflict with the constitution are valid, while

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such parts as are held by the court to be in conflict with the constitution are invalid.

Mr. Justice Gray announced his dissent and justified it very briefly. He simply declared the decision to be, in his opinion, irreconcilable with the decision in the case of Fleming *vs.* Page and with the decision in the most important of the insular cases still to be pronounced, that of Downes *vs.* Bidwell. He, too, evidently held what the majority called the dictum in the case of Fleming *vs.* Page to be the ground of the decision, and therefore controlling in the cases before the court.

Such was the decision and such the dissent from it in this logically first of the insular cases; and the law of the land as fixed by it is, as I have said, that, when the sovereignty of the United States and the jurisdiction of the United States government become established over any territory, district or country by a completed treaty of cession, accompanied by possession, that territory, district or country ceases in all respects to be foreign to the United States and becomes domestic for all purposes, and all the laws of the United States in respect to the relations to foreign countries cease immediately to have any application to such territory, district or country, or any force or effect in regulating its relations or the relations of its inhabitants to the other parts, or the inhabitants of the other parts, of the United States.

II. *The Applications of the Principle of the De Lima Decision.*

Upon the basis of the decision in the De Lima case, the majority of the court, composed of the same members that constituted the majority in the De Lima case, held, in the case of Dooley *vs.* The United States, that duties collected upon merchandise going into Porto Rico from the other ports of the United States after the completion of the cession of Porto Rico to the United States,—that is, after April 11, 1899,—possession of the island being, of course, established, were unlawfully exacted and must be refunded. The court recognized that the facts of the two cases were not exactly the same, the merchandise

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coming in the first case from Porto Rico into another port of the United States and in the second going from another port of the United States into Porto Rico. But the court said that the same principle governed both cases — namely, the principle that upon the completion of the cession, including possession, Porto Rico ceased to be a foreign country and became a part of the United States. The temporary military administration of a district of a foreign country by the President of the United States was held by the court to have been changed by the treaty of cession into the military administration of a district or territory of the United States by the United States government. While the court, then, pronounced valid the duties levied and collected by the president and his military government in Porto Rico during the period that they administered the same by virtue of the military occupation of Porto Rico as a district of a foreign state; and while the court did not deny, but affirmed, the lawful continuance of military government by the United States in this district after it became a territory of the United States until Congress should otherwise direct; yet the court, on the other hand, denied the right of the government, whether acting under military or under civil powers, to collect upon merchandise going from the other ports of the United States into Porto Rico, after the cession, either the duties fixed by the military commander or the president, or those fixed by Congress upon the like merchandise coming into the United States from foreign countries. The exact language of the court is:

> Without questioning at all the original validity of the order imposing duties upon goods imported into Porto Rico from foreign countries, we think the proper construction of that order is, that it ceased to apply to goods imported from the United States from the moment the United States ceased to be a foreign country with respect to Porto Rico, and that until Congress otherwise constitutionally directed, such merchandise was entitled to free entry.

It will be observed that the court does not say "until Congress otherwise directed," but "until Congress otherwise *constitutionally* directed." All the members of the majority could

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subscribe to this, even though they or some or any of them might hold that Congress could not *at all* otherwise direct.

The four justices dissenting in the De Lima case dissented likewise in this case, and based their dissent upon the same ground as in the former case—namely, upon their opinion that a territory or district ceded by a foreign country to the United States remains a foreign country in the sense of the customs laws of the United States until it shall be incorporated into the customs union of the United States by an act of Congress.

The two cases of Goetze *vs.* The United States and Crossman *vs.* The United States involved the same questions as those decided in the De Lima case and were disposed of upon the principles pronounced in that case, with no dissent filed.

The case of Armstrong *vs.* The United States involved the same questions as those decided in the Dooley case and was disposed of upon the principles pronounced in that case, with no dissent filed.

Finally, the case of Huss *vs.* The New York and Porto Rico Steamship Company involved the questions whether, after the cession of Porto Rico to the United States, "vessels engaged in trade between Porto Rican ports and ports of the United States are engaged in the coasting trade in the sense in which those words are used in the statutes of the state of New York regulating pilotage," and "whether steam vessels engaged in trade between Porto Rican ports and the ports of the United States are coastwise steam vessels in the sense in which those words are used in Section 4444 of the Revised Statutes of the United States." The court, on the principle decided in the De Lima case, answered both of the questions in the affirmative, with no dissent filed.

III. *The Downes Case.*

Down to this point the upholders of absolutism in the insular territories of the United States had received but little comfort. It was intimated, however, in the dissenting opinion in both the De Lima case and the Dooley case, that at least one of the justices acting with the majority did not in all respects draw

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from the principles decided in those cases the conclusions which at first view appeared natural, if not necessary. This intimation was immediately verified by the decision then presented in the case of Downes *vs.* Bidwell. This case involved the all-important question of the power of Congress to impose duties upon merchandise coming from Porto Rico into the other ports of the United States, after the island had been ceded to the United States and when the United States was in full possession, exercising complete sovereignty, dominion and jurisdiction over it, and to impose these duties without regard to the rule of uniformity required by the Constitution of the United States in the levy and collection of all duties, imposts and excises throughout the United States.

The judgment in this case was concurred in by the four justices who dissented from the judgment in the De Lima case—namely, Justices Gray, White, Shiras and McKenna—and by Justice Brown, of the majority in the De Lima case. In the Downes case Mr. Justice Brown pronounced the judgment, which read:

> We are, therefore, of opinion that the Island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the constitution; that the Foraker Act is constitutional, so far as it imposes duties upon imports from such island, and that the plaintiff cannot recover back the duties exacted in this case.

Mr. Justice Brown disagreed entirely, however, with the other four as to the ground upon which this judgment was placed, they holding to the same principle in the determination of this case as advanced by them in their dissenting opinion in the De Lima case. That is, the decision in the Downes case was based by four of the justices upon a principle which the majority of the court had already repudiated in the De Lima case, and by one of the justices upon a principle which the other eight repudiated in the Downes case; while the dissenting opinion in the Downes case, by Chief Justice Fuller and Justices Harlan, Brewer and Peckham, was based upon the

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principle which had been pronounced sound and valid in the De Lima decision. This is a most uncertain and unsatisfactory condition for so important a matter to be left in, and there is no question that sound logic will demand a reconsideration and a resettlement of it.

The surprising thing about it all is the change of front accomplished by Mr. Justice Brown. As we have seen in our account of the De Lima decision, he, with the Chief Justice and Justices Harlan, Brewer and Peckham, held firmly to the principle that by the treaty of cession, accompanied by possession, Porto Rico had become in all respects a domestic territory of the United States and remained for no purposes foreign territory. That, after this, he could join in the decision rendered in the Downes case is, at first view at least, rather startling. It requires considerable explanation to make it at all intelligible, and his propositions defy the rules of grammar and rhetoric, at least, to make them consistent.

After disposing of the question of jurisdiction upon the same principle as that applied in the De Lima case, Justice Brown addressed himself to the substance of the case — to the question, as he stated it, as to whether "the revenue clauses of the constitution extend of their own force to our newly acquired territories." The Justice declared that "the constitution itself does not answer this question" and that "its solution must be found in the nature of the government created by that instrument, in the opinion of its contemporaries, in the practical construction put upon it by Congress and in the decisions of this court." The Justice then proceeded to expound the construction of the constitution and government of the United States upon a purely states-rights view, arriving at the proposition that "the constitution was created by the people of the United States as a union of *states*, to be governed solely by representatives of the *states*," and that it "deals with states, their people and their representatives." He then makes much of the Louisiana precedent, where, as we know, for a short time after the treaty of cession and possession accomplished under it, the United States government did levy and collect duties upon

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merchandise coming from Louisiana into the other ports of the United States; and he declares, at last, that in the cases of McCulloch *vs.* Maryland and The United States *vs.* Gratiot the Supreme Court of the United States had held that "the power over the territories is vested in Congress without limitation." From all this the inference is natural, and the Justice seems at first to draw this inference himself, that the Constitution of the United States applies only to that part of the territory of the United States which is erected into states, while as to the other parts Congress has absolute power. He, however, in a later passage of his opinion, draws back from this conclusion and says:

> To sustain the judgment in the case under consideration it by no means becomes necessary to show that none of the articles of the constitution apply to the Island of Porto Rico. There is a clear distinction between such prohibitions as go to the very root of the power of Congress to act at all, irrespective of time or place, and such as are operative only "throughout the United States" or among the several states. Thus when the constitution declares that "no bill of attainder or *ex post facto* law shall be passed," and that "no title of nobility shall be granted by the United States," it goes to the competency of Congress to pass a bill *of that description.* Perhaps the same remark may apply to the First Amendment, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peacefully assemble, and to petition the government for a redress of grievances." We do not wish, however, to be understood as expressing an opinion how far the bill of rights contained in the first eight amendments is of general and how far of local application.

The language in these two parts of the opinion seems inconsistent. I do not think it too hard to say that it is inconsistent. On the other hand, I think the Justice has a consistent — that is, a logically conceivable — idea on the subject. I think what he means is simply this, that some of the constitutional limitations which apply to Congress in legislating for that part of the territory of the United States which is erected into states do not apply to Congress when legislating for those parts of the territory of the United States which are not erected into states,

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and that the uniformity clause in the levy and collection of duties, imports and excises is one of these. Now the first part of this proposition is undoubtedly true in this sense, namely, that Congress cannot legislate at all for that part of the United States which is erected into states upon any subject reserved by the constitution exclusively to state jurisdiction. Every member of the court, and everybody else, would agree with Justice Brown upon that proposition. But the other dictum — namely, that the uniformity clause of the constitution as to the levy and collection of duties, imports and excises applies only to that part of the United States which is erected into states — is the point of difference between Justice Brown and the four dissenting justices — in fact, between Justice Brown and all the other members of the court; for, as we shall see, those of his brethren who united with him in the judgment declare that the uniformity limitation applies to all the territory that has been by act of Congress incorporated into the Union, and not alone to that part of the territory of the United States which has been erected into states. Moreover, it must be kept in mind that Justice Brown's view in this respect is squarely in conflict with the principle of the decision in Loughborough *vs.* Blake, which has never been overruled. Justice Brown's doctrine upon this point is, therefore, neither law nor jurisprudence in this country, and his judgment in the Downes case cannot stand upon the reasons advanced by himself.

The propositions advanced by Justice Brown's four colleagues in the rendering of this judgment, and pronounced by Justice White, are certainly more intelligible and, in some respects at least, more correct. They took the ground simply and squarely that the United States consists of the states, together with all territories incorporated by a Congressional act to that effect into the Union; that a conquest alone, or a treaty of cession alone, or one or both united with possession alone, cannot incorporate territory into the Union of the United States; that an act of Congress, original or confirmatory, is necessary to accomplish this; and that until this act is passed, the territory concerned remains foreign territory "in a domestic sense" and

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may be dealt with as a foreign country, at least as regards the levy and collection of duties upon merchandise coming from it into the ports of the United States.

These four justices, furthermore, answered the question as to how the government of the United States could hold and govern foreign territory, by saying that it could be done, first, under the military power vested by the constitution in the President of the United States and, second, under the treaty-making power, in both of which situations constitutional limitations were not applicable. They professed to derive these principles from the practices of the government, in the Louisiana precedent particularly, and from the decisions of the court, especially in the case of Fleming *vs.* Page. They attempted to get around the precedents in the cessions from Mexico in 1848 and Russia in 1867 by distinguishing the first, as a rectification of boundary, from the ordinary straight-out cession and by declaring that in both cases legislation by Congress of a confirmatory character immediately followed the treaties. They attempted to break the force of the decision in Cross *vs.* Harrison by the same method which they employed in the De Lima case; and they ignored altogether the fact that their main proposition — namely, that Porto Rico was still and is still a foreign country "in a domestic sense" — had just been held, by the De Lima decision, to be false and no law or principle of law in the United States. The ground, then, upon which they set the judgment in the Downes case has also no place in the law or jurisprudence of the United States, since four justices in a court of nine cannot give it such place. I shall not undertake in this paper to criticise their course of reasoning. That will be the subject of later essays. I will conclude this article by a brief statement of the dissent in this case and of the grounds therefor.

Justices Harlan, Brewer and Peckham agreed in all points with the Chief Justice in the dissent pronounced by the latter, and Justice Harlan supplemented the same by a lucid and vigorous opinion of his own.

In approaching these presentations of reasons for dissent, one

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becomes immediately aware of the fact that he has emerged from the tortuous paths which he has been attempting to follow and is upon the broad and open way, *en plein air*, and with an unobstructed view.

These clear, strong, logically constructed and well-expressed opinions uphold and demonstrate, in the first place, the national character of the political system of the United States as a union of people in sovereign power inhabiting the states, territories and districts subject to the sovereignty and dominion of the United States and the jurisdiction of the United States government.

They pronounce, in the second place, the free quality of the United States government, as acting, at all times and in all places, under the control of the constitution and, in times of peace, in all places subject to the permanent dominion of the United States, under all of the limitations of the constitution in behalf of individual immunities against governmental power; upholding thus the vital principle of American liberty — that while the nation is sovereign and absolute, the government can do only what the nation, through the organic law, permits it to do.

They assert, in the third place, that while the acts of the treaty-making organ and those of the statute-making organ of the United States government are placed on an exact equality by the constitution, as law of the land, both are subject to the limitations imposed by the constitution upon the operations of the government when they come into conflict with the constitutional immunities of the individual against governmental power, and that when a treaty or a statute contains anything in conflict with these constitutional limitations, that part is null and void, though all other parts may stand.

They declare, in the fourth place, that when, by a completed treaty of cession, accompanied by possession, new territory, inhabited by people, is brought under the sovereignty and permanent dominion of the United States and made subject to the jurisdiction of the United States government, it becomes an integral part of the territory of the United States, and its

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inhabitants come into the enjoyment of all of the constitutional immunities against governmental power enjoyed by persons in other parts of the United States under the exclusive jurisdiction of the United States government.

They hold, in the fifth place, that one of those immunities is exemption from arbitrary taxation by the United States government when taxing, as general government, these new inhabitants; and that a customs duty is always subject to this exemption, since it is a regulation of commerce, or necessarily involves a regulation of commerce, either with foreign countries or between the different states, territories or districts of the United States; and that the United States government can make such a regulation only as a general government, and never as a local government in a territory or district. And they affirm, finally, that a customs duty levied upon merchandise going from one state, territory or district of the United States into another is forbidden by the spirit of the constitution, as interpreted by previous decisions of the court.

They meet the Louisiana precedent, produced by the narrow view of the constitution held by Jefferson and the narrow jealousies of the Federalists in regard to the gravitation of the political control of the country westward, by showing that it was set aside in the California-New Mexico precedent, which latter was, by the decision in Cross *vs.* Harrison, declared to be the law of the land and has been followed down to the present time.

They meet the Guano Islands precedent by pointing out that, while the United States may own uninhabited land, *terra nullius*, as appurtenant property, its government cannot own people, or even inhabited land, in the same sense.

They meet the assertion, that the constitution and laws of the United States never exist within a territory of the United States until extended thereto by an act of Congress, by the distinct declaration that, "when the acquisition of territory by the United States becomes complete by cession, the constitution necessarily becomes the supreme law of such new territory," and Congress, "the creature of the constitution," having

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itself "no existence except by virtue of the constitution," can never exclude its creator from territories which were acquired, and could only be acquired, by authority of the constitution; and they explain the language of Congressional statutes, relied on by Justice White and his colleagues in the Downes judgment as indicating the contrary, by citing the dictum of Judge Edmunds, that

> the instances in which Congress has declared in statutes organizing territories, that the constitution and laws should be in force there, are no evidence that they were not already there, for Congress and all legislative bodies have often made enactments that in effect merely declared existing law. In such cases they declare a pre-existing truth to ease the doubts of casuists.

They meet the decision in the case of Fleming *vs.* Page by simply pointing out that Tampico had not then been ceded to the United States and never was afterwards, and that permanent dominion over it was never claimed by the United States; that it is not, therefore, a parallel case; and that, if it were, the test of incorporation into the United States claimed to have been set up by it — namely, the establishment of customs houses and collectors by Congress in the acquired district — had been fulfilled as regarded Porto Rico by the Foraker Act itself. It is to be observed that Justice White and his three associates, in their opinion, object to the use of one part of the Foraker Act by the dissenting justices to overthrow the effect of the other part — that is, the part establishing customs houses, collection districts, *etc.*, to overthrow the part establishing duties between Porto Rico and the United States. They did not seem to notice that they had themselves undertaken to overthrow the effect of the part establishing customs houses, collection districts, *etc.*, according to their interpretation of the Fleming *vs.* Page decision, by that part establishing customs duties between Porto Rico and the United States. It must also be remembered that the dissenting justices did not base their opinion upon the Foraker Act at all, but simply pointed out the inconsistencies of it, from the point of view of

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the Fleming *vs.* Page decision, as interpreted by Justice White and his three associates.

The majority having held that the right to keep Porto Rico out of the customs union of the United States was reserved to Congress by the treaty with Spain, in the clause which provides that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress," the dissenting justices reply that Congress can only exercise its constitutional powers in doing these things and cannot be endowed with arbitrary or unlimited power in this respect by a treaty, and that, if it were intended to reserve to Congress absolute power in reference to these things, the treaty in this part was unconstitutional and void, while entirely valid and lawful as to the cession.

And, finally, they meet all the arguments of the majority from the point of view of political necessity or convenience, by saying that the judicial department can only interpret the constitution as it is; that its duty is first of all to protect the constitutional immunities of the citizens and persons subject to government; that if it should be found that the government is too much hampered by the constitution as it is, the constitution itself provides the regular and lawful way by amendment for the enlargement of governmental powers and forbids any enlargement by way of usurpation; and if, meantime, unbearable hardship should possibly be caused by holding the action of the government within its constitutional orbit, there is always the practically unlimited power of appropriating money, constitutionally possessed by Congress, whereby such temporary hardship may be fully relieved.

This entire course of reasoning and the resulting opinion are simple, clear and consistent, and they are what nine-tenths of all minds that know anything about American constitutional history and law supposed in 1897 to be the exact, irrefragable, immutable truth. Moreover, as we have seen, the dissenting opinion is based upon a principle which, in the De Lima decision, is pronounced to be the law of the land, namely, that Porto

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Rico became by the completed cession, with possession, in all respects a domestic territory of the United States and continues in no sense to be foreign territory — a principle which, therefore, appears to the ordinary mind to knock the foundation from under the judgment in the Downes case altogether; since Justice Brown's assent to the judgment was rested by him on a proposition held by himself alone, a proposition repudiated by all the other members of the court in this very case and by the court in several preceding cases.

The judgment in the Downes case is, therefore, nothing but an arbitrary bit of patchwork. Its purpose is to satisfy a certain demand of fancied political expediency in the work of imperial expansion. It is based upon the narrowest possible view of that expediency; for I venture to affirm that in the prosecution of that policy the simple knowledge on the part of those to be made subject to it that the constitutional liberties of the great republic were to be extended to them, as well as its powers extended over them, would be worth to us an army of a million of men.

There are two cases yet remaining to be disposed of by the court, one involving the question whether duties can be collected in Porto Rico, since the Foraker Act went into operation and as provided by that Act, on merchandise going from the other ports of the United States into Porto Rico, and the other involving the question whether duties could be imposed on merchandise coming from the Philippine Islands to the United States between the date of the ratification of the treaty of cession and the passage of the Spooner Act, vesting the president with all the powers of Congress in the civil government of the Philippines. There is thus opportunity for a reconsideration of the whole question in principle. It is to be hoped that advantage will be taken of this opportunity and that the court will, at least, give us a judgment and a principle to sustain it which will be more consistent than those pronounced in the Downes case.

JOHN W. BURGESS.

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REVIEWS.

Historical Jurisprudence. An Introduction to the Systematic Study of the Development of Law. By GUY CARLETON LEE, Ph.D. New York, The Macmillan Co., 1900. — xv, 517 pp.

Historical jurisprudence has thus far mainly concerned itself with the development of the various systems of national law. With the introduction of the comparative method, however, efforts have been made to discover the stages through which national law normally passes and the laws, if such there be, that govern its evolution. In such investigations the order of time in which the different national systems have appeared is disregarded: the institutions of different peoples are treated as comparable only in so far as they represent similar stages of civilization.

Law, however, is not wholly, perhaps not even mainly, a product of national development. Besides international law, in the strict sense, there are bodies of law, like the law merchant, whose history is as old as the earliest records of the human race and whose development has always been supernational; and in the field of law which we commonly regard as strictly national there have been constant receptions, voluntary or compulsory, by each nation of institutions and rules worked out by other nations. Across the legal development of the really historic races there is discernible a more universal movement; something of the results attained by each leading race has been inherited by its successors; and a history of human law may yet be written in which each nation will receive credit for that which it has added to the law of the world.

The structure of Dr. Lee's book, his sub-title and a part of his introduction suggest that it was his purpose, or at least his desire, to write such a history — not of all law, indeed, but at least of private law. He has selected, he says, those systems "which have contributed to the great stream of scientific jurisprudence" (p. 6); and as regards his selection, there is not much to criticise. His reason for including a sketch of Hindu law seems inadequate and incorrect. He admits that it "has stood quite apart from the great progress of European jurisprudence," but urges that "it is the most perfect example of Aryan law as free from the influence of Babylon

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and Egypt" (p. 7). This, I think, is untrue. Assuming that there was an Aryan law, *i.e.*, a body of legal customs from which those of the Indo-European peoples have been derived, it is probable that early German law gives us a much better "example." Early German law is, on its face, more primitive than the Hindu law, as the latter has come down to us, and it is more certainly free from Babylonian influence. The law of Manu, which Dr. Lee sets forth, is not primitive. It is a refined, not to say sophisticated, product of juristic reflection. What makes it seem strange and therefore archaic to us is its sacerdotal coloring.

It may further be urged that the historical order, which Dr. Lee follows, would be better observed if his chapter on the Barbarian Codes had preceded, instead of followed, that on the Canon Law; and between these chapters, thus rearranged, there should be chapters on the Frankish empire and on feudalism. The important contributions which Frankish royal ordinances made to the development of European law are noted only partially and slightly in the chapter on Early English Law, and the sketch of feudalism is relegated to the same chapter. Finally, it is hard to say why, in a work designed especially for English and American students, the sketch of English legal history should end with Bracton, while that of continental legal history is brought down to the German civil code of 1896; unless "jurisprudence" be taken, as Sir Frederick Pollock says it is frequently taken, to signify a knowledge of every legal system except one's own.

Far more serious criticisms must be made on the substance of the work. It must be said, with regret, that the author has not succeeded in indicating the real contribution which each great national system has made to the law of the world. I use the word "indicate," rather than "show" or "demonstrate," because, in the present state of historical investigation, the transfer of legal ideas or institutions from one nation to another can be demonstrated in but a small proportion of the cases in which it seems probable that such a transfer occurred. It is questionable whether Dr. Lee quite realizes this difficulty. He does not, indeed, fall into the cheap error of taking similarity for proof of transfer; on the contrary, he explicitly recognizes "the element of common humanity — of likeness of thought and action, impulse and effect, under like conditions" (p. 11 and also p. 54); but he adds, quite inexplicably, that "it is this inherent oneness that gives to historical as to comparative jurisprudence the promise of success." There is here, it seems to me, a singular confusion of

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thought. The "inherent oneness" of human nature is, indeed, the very basis of such comparative studies as are described in the opening paragraph of this review; but this same "oneness" is the greatest obstacle to the satisfactory solution of the problems of universal legal history. Derivation of a legal idea or institution becomes a fact to be proved in each case, and to be proved only by such minute researches as, for example, Bruns has made regarding presumption of death in cases of disappearance and Brunner regarding the origin of the English jury.

The disappointment which Dr. Lee's book occasions is, therefore, not ascribable (unless by an unreasonable reader) to the absence of complete proof of the derivation of this modern institution from Babylonian law or that modern rule from Jewish law: it is rather ascribable to the fact that, with a few sporadic exceptions, the author forgets, or at least ignores, the essence and aim of historical as distinguished from comparative jurisprudence; that he fails, in most cases, to indicate what are the salient and new elements of each legal system which have demonstrably or probably passed into world law; that he obscures these elements with details that have no possible bearing on the development of the law of the world — details that belong rather to legal archæology than to legal history; and that his book resolves itself into a series of disconnected sketches of a number of legal systems.

The value of such a work (for such a work may have its value) depends, therefore, on the accuracy and excellence of the single sketches. It seems not unfair to test it by a somewhat careful examination of one of its most important parts, which covers something more than a fourth of the book — that relating to the Roman law.

In his preface the author claims that the text of his work "is generally based on original research," although he has not hesitated to avail himself of the results of the investigations of others (p. 9). As regards the Roman law, however, he gives little evidence of familiarity with the sources and some evidence of unfamiliarity. He does not allude to the Royal Laws, and he can hardly have examined any collection of them, or he would not describe the emancipation of the son after three sales as a rule introduced by the Twelve Tables (p. 203). He does not appear to know Lenel's reconstruction of the Edict, a work which is indispensable to the study of the prætorian law. He cites the Digest of Justinian rarely, and in some cases with singular infelicity. For example, the references on p. 224 to D. 2, 13, 1, *pr.*, and on p. 248 to D. 3, 3, 68, do not in any way support the

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statements to which they are appended. Further, on p. 317, the author tells us that the law books of Justinian, with the exception of some novels, were written in Latin; and on p. 404 he makes it clear that this statement is not a slip of the pen, but that he is really ignorant of the fact that numerous passages of the Digest and whole titles of the Code were left by Justinian's commissioners in the Greek and came in that form to the Glossators.

In dealing with early Roman law, where so much is hypothetical, it is impossible to prove that any coherent reconstruction is wrong; but it may reasonably be demanded that the theories adopted should be coherent. Dr. Lee's are not. In dealing with plebeian marriage he says, on p. 77, that the wife was purchased by the husband, but that he acquired over her no such authority as was conferred by the patrician form of marriage until a year had elapsed, when he gained marital power by *usucapio*. On p. 191 we are informed that, before the time of Servius, plebeians were incapable of contracting lawful marriage — a statement not inconsistent with the first, if emphasis be laid upon the word "contract." On the next page we learn that Servius introduced the ceremony of mancipation, which made it possible for a plebeian to buy his wife in a formal and legal fashion. On p. 193, however, it appears that this result did not flow from the mere introduction of mancipation, but from the organization of the plebeians into *gentes* and the admission of these *gentes minores* into "the patrician tribes" (*sic!*). "The plebeian thus acquired civil rights. He could buy and sell according to the legal method." All this was the work of Servius. On p. 203, however, the author asserts that marriage by *usucapio*, previously a mere custom, first obtained binding force through the Twelve Tables; and on p. 205 he remarks that the plebeians could not convey by mancipation before the Twelve Tables, because this was a "Quiritarian" form! Less obviously contradictory, but almost equally confused and confusing, are the author's remarks regarding *res mancipi* and *res nec mancipi* (pp. 205, 206), and regarding the relation between *nexum*, *sponsio* and *stipulatio* (pp. 202, 215, 217).

With the Twelve Tables, of whose fragments Dr. Lee gives a translation (197–201), we reach firmer ground, and it becomes possible to say that a statement is true or untrue. In the translation of the Tables there are points that invite criticism. For example: there is no reason, I think, for assuming, in I, 6 (or, as Dr. Lee numbers it, I, 5), that it is "the magistrate" rather than the plaintiff who is to announce a compromise; and in I, 8 "the

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magistrate" is clearly out of place; it is the *iudex* who is to "award the suit." In I, 7 (or, according to Dr. Lee, I, 6) *caussam coiciunto* is mistranslated (*cf.* Gaius IV, 15), and the ensuing clause, *peroranto ambo praesentes*, is omitted. Such renderings as the following: *obvagulatum ito* (II, 3), "serve a verbal notice"; *manus iniectio esto* (III, 2), "serve a formal summons"; and *sacer esto* (VIII, 21), "he shall become infamous," are hopelessly inadequate; they take all the backbone out of this strong old code. The same must be said of "divide the property," for the famous *partis secanto* (III, 6); this late and humane gloss should have been mentioned in the discussion on p. 211, but not inserted as the translation on p. 198.

In dealing with prætorian law Dr. Lee recognizes it as "probable" that the great changes introduced by the formulary procedure and embodied in the edict of the city prætor began in the administration of justice to foreigners by their special prætor and by the provincial governors (pp. 223, 234); but he seems to think that the city prætor was always able to grant or to deny actions, and he fails therefore to grasp the significance of the *lex Aebutia*. His scepticism regarding Gaius's statement (that this law introduced the formulary procedure into strictly Roman litigation) is based on the fact that the old *legis actiones* were used for centuries afterwards (pp. 223, 224). But Gaius does not say, and could not have imagined that any one would accuse him of saying, that the *lex Aebutia* "suppressed the *legis actiones*." The statement on p. 225, that the formulary procedure so hampered the *iudex* as to deprive his work "of all significance," gives the critical reader a shock of surprise and causes him to wonder whether the author, in the course of his original researches, ever compared the questions submitted to the *iudex* in the *legis actio sacramento* with those put to him in a *bonæ fidei actio;* and Dr. Lee's apparent identification of this formulary procedure with the prætor's occasional *cognitiones extra ordinem* and with the regular procedure of the imperial period is simply amazing. The assertion that the prætors were necessarily men of "legal training" (p. 230) is incorrect; many were not, and all depended largely on the *iuris periti* in their councils. *Clam* in the possessory interdicts is not "by fraud" (p. 241); and although it is true that these interdicts became conditional, it is not true that they were not enforced by any penalty (p. 228).

Equally erroneous statements occur in the description of the law of the empire. It is not true that the emperor's judicial powers were based on his position as *pontifex maximus* (251, 253). Impediments

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to marriage resulting from affinity were not first recognized in the Theodosian code (p. 308): the statement is true only of collateral affinity. Neither *ius in agro vectigali* nor *emphyteusis* owed its origin to imperial legislation, nor was the former tenure confined to "land taken in war" (p. 311). The *praescriptio longi temporis* was not introduced by Justinian, as is implied on p. 310, nor was it simply the ancient *usucapio* with lengthened terms of possession. Nor did this emperor, nor any other, decree that when grandchildren alone succeeded to an estate they should take *per capita* (p. 315).

In tracing the mediæval and modern history of the Roman law in the East, Dr. Lee tells us that the Hexabiblos of 1345 "was an excellently arranged system of law" (p. 320). The reviewer has not encountered any other judgment so favorable: Bruns, for example, calls the compilation "*kläglich*." As regards the Roman law in the West, we are informed, on p. 401, that the German imperial ordinance of 1495 was not "a formal adoption of the Roman law," since that law had long been regarded as binding; but on p. 431 we are told that the Roman law was received in Germany and in Scotland "by a formal Act of Legislature." On p. 399 the author seems to imply that at the present time the Roman law is still subsidiary law in Italy, which, of course, is untrue; but he does not mention, in speaking of Spain, that this is really the case in Catalonia.

A comparatively hasty reading of the rest of the book yields a list of *corrigenda* quite as formidable as the list (by no means complete) which I have given for the portion dealing with Roman law. Limits of space, however, permit me to cite only a single illustration — extreme, indeed, but unfortunately typical of the author's inexactness in compilation and carelessness in proofreading. On p. 412, in a paragraph on the history of the Austrian code, he says:

> At the command of Maria Theresa, Professor Apponi in 1767 made a compilation for a proposed code. From this Hosten made a condensation, which von Martini worked up into a law book.

Here four corrections are necessary in the space of thirteen words. (1) For Apponi, read Azzoni. (2) There was no compilation made in 1767. A partial draft was reported in 1755; a complete draft in 1766. (3) Azzoni, who was only one of several commissioners, and who died in 1761, was largely responsible for the draft of 1755, but was not the author of the draft of 1766. This was the work, in the main, of Zenker. (4) For Hosten, read Horten. It may be added that if Azzoni and Horten merit mention, fairness would demand some

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reference to Zeiller, to whose labors the code owes in large measure its final form. It is, indeed, very questionable whether any of these facts are important enough to deserve inclusion in a book which endeavors to cover so vast a field in so brief compass; but if they are to be stated at all, it would be as well to state them correctly.

This book is not a credit to American scholarship. If it find readers, it will serve chiefly to increase that stock of miscellaneous misinformation that is sometimes mistaken for general culture.

MUNROE SMITH.

Lois et usages de la neutralité d'après le droit international conventionnel et coutumier des états civilisés. Par RICHARD KLEEN. Paris, 1898–1900. — 2 vols.: xix, 660; ix, 758 pp.

This comprehensive treatise is an amplified reproduction of a work published in 1889–91 at Stockholm in Swedish, and entitled *Neutralitetens Lagar*. It is divided into four books, which relate, respectively, to fundamental principles, the duties of neutrals, the rights of neutrals, and the means of enforcing the observance of those rights and duties. In respect of the rights of neutrals the author belongs to the Continental school of publicists, who have resisted the claims of belligerent prerogatives set forth in the decisions of the English prize courts. This is the school to which the later American publicists have generally belonged, and it is commonly supposed that the United States government is to be classed with those that have sought to establish liberal doctrines. To a great extent this is true with regard to the executive; but it is quite untrue with regard to the judiciary. Mr. Kleen refers to Americans of the "old type," such as Kent, Story and Wheaton, who repeat the "despotic language" of Sir William Scott, Manning and Wildman, and mentions American writers of a later time who espoused the principles of the continental school. Kent and Wheaton, however, repeated as writers what Story said as a judge, and what the supreme court, of which Story was a member, actually decided. Nothing could better illustrate the sway of English precedents over conservative minds among American judges than the extreme deference paid by Mr. Justice Story and a majority of his associates to the decisions of Sir William Scott, in the first publication of which the American minister at London, Mr. Rufus King, was largely instrumental, his object being not only to inform his countrymen of the grounds on which their property was being

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condemned, but also to bring to bear on Sir William, if possible, the deterrent influence of publicity. There was, indeed, a time when the English prize law was the American prize law, but this condition had ceased to exist when Sir William Scott succeeded Sir James Marriott in the high court of admiralty.

The work of Mr. Kleen is so full that it is impossible within a brief space to subject it to analysis. He appreciates the difficulties of his task — difficulties enhanced by the very unsatisfactory state in which the series of great wars which ended with the downfall of Napoleon left the rights of neutrals. The American Civil War and its consequences contributed much to the development of the law relating to neutral duties, but did comparatively little for that of the law of neutral rights. In respect to the latter the Congress of Paris of 1856 constitutes the great landmark of the nineteenth century in the progress towards definiteness. Outside of this, the author is compelled to rely upon his legal discernment. In dealing with custom Mr. Kleen accepts as authoritative that which is recognized and approved by the great majority of states; but he does not hesitate to reject a tradition which, although it was previously accepted, has evidently ceased to be responsive to the judicial conscience of nations. In general, he endeavors to avoid the intermingling of international regulations and national legislation; for he thinks that the ancient pretension of some powers to attribute to their national decrees the importance of universal laws has, more than anything else, served as an obstacle to progress and to the codification of the law of nations.

As to some of Mr. Kleen's conclusions there will inevitably arise a difference of opinion. It is impossible for a writer on the law of neutrality to reconcile all views, since the incompatibility not infrequently proceeds from premises which are radically antagonistic. He supports his positions, however, with an abundance of learning, and with clear and temperate argument; and he has produced a work which fills a large space in the literature of the subject to which it relates.

J. B. MOORE.

Government in Switzerland. By JOHN MARTIN VINCENT. New York, The Macmillan Co., 1900. — 370 pp.

This is a good book on a good subject. Every one goes to Switzerland, but few know anything of its government beyond the fact that it is a federal republic, much given to submitting legislative

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measures to popular vote. Apart from its scenery, Switzerland furnishes the outside world with little matter for conversation; the Alpine Club engages much more attention than the Swiss constitution.

This little country occupies a unique position amid the great powers of Europe; it is undisturbed by dreams of ambition or desire for expansion. Members of three different nationalities live together in unity, each preserving its own tongue, without, apparently, any yearnings for Germanic, Gallic or Italian reunion. If widespread moderate prosperity, freedom from foreign complications, tranquillity at home and a peaceable life are the ideals for which nations should strive, the Swiss have been exceptionally successful in obtaining them. Results such as these are due not only to an exceptional situation, but to an exceptional population. The Swiss are free from the problems of large immigration and the introduction of foreign elements. They are a moral, industrious and thrifty folk, with a fairly good average of education. There seems every reason to expect that their present prosperity will be long continued.

Twenty-two cantons form the Swiss confederation, and of these three are subdivided, so there are in all twenty-five cantonal governments. The constitution under which they now live was adopted in 1848, and has since been modified from time to time. In Switzerland, as in the United States, the tendency, on the whole, has been to strengthen the federal government, and yet a large degree of autonomy is preserved for the cantons. In a rough way the division of power is not unlike that which exists in the United States, though there are numerous differences in detail. When we read that the entire amount paid for army pensions is a little over $8000 a year, and that the expenses of the federal legislature do not much exceed $50,000, it is evident that we are dealing with conditions far removed from those which exist in our country.

It is doubtful whether the workings of the Swiss constitution furnish valuable data for the use of a great nation like our own, rapidly increasing in size and confronted by social and economic problems which have no existence in Switzerland. The student will find most interest in the features of government which are novel or have no counterpart with us. The Swiss have made political experiments which might be hazardous elsewhere, but seem to work successfully in their own land. Legislation by referendum, or by the general vote of all citizens, is in extensive use. In some

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of the cantons almost every measure of popular legislation, upon the request of a certain number of citizens, must be submitted to the decision of universal suffrage. In Basel Land the entire work of the legislature, at the close of each session, is submitted to a popular vote. We have thus a close approach to pure democracy, and the results are not unsatisfactory.

This system is for the most part applied in the smaller cantons, amid populations homogeneous and dwelling in restricted areas. For example, the canton of Appenzell Inner contains thirteen thousand people, dwelling in a circle about ten miles in diameter; the entire voting population does not exceed twenty-five hundred. Such a body is only about four times as large as the British Parliament. The voters are in orderly habits and in self-restraint, if not in political education, the equals of the average American legislator. It is evident that the principles of pure democracy are not put to a very severe test.

But a similar process works satisfactorily in larger bodies. When there is a referendum in the federal government, a vote has to be taken in all the cantons. On the whole, the action of the people on the questions submitted to them has been conservative. Various measures which received the support of the Socialistic party have been lost by popular vote. Laws of which the object was to guarantee labor to every citizen, to shorten the hours of toil and to provide insurance against lack of work, were rejected by the federal legislature, and upon submission to the people four-fifths of the voters ratified this action.

In another respect, the Swiss legislators have adopted a reform that with us has not gone beyond the stage of discussion. Formerly gerrymandering seems to have been almost as much a fine art in Switzerland as in America, but this evil has been remedied. Since 1890 proportional representation has been the rule, and the method of securing it is very simple. There are ten candidates to be chosen, we will assume, in a constituency of sixty thousand voters, thirty thousand of whom belong to the Liberals, twenty thousand to the Conservatives and ten thousand to the Socialists. Having such a problem to deal with, an active partisan in this country would hope so to arrange voting districts that the prevailing party could secure certainly seven and probably eight members. In Switzerland each voter casts his ballot for ten candidates, and representation is then allotted between the different parties in proportion to the vote cast. In the above case, for example, five delegates

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would be Liberals, three Conservatives and two Socialists, and the candidates of the respective parties receiving the highest vote would be elected. The process is simple and easily applied, and it works satisfactorily. Whether such a system would find favor in our country is doubtful, yet it is hard to foresee the results of any changes in popular institutions.

Professor Vincent's book gives a clear and instructive statement of the nature and operations of the Swiss government; it is full of interest for any student of politics.

JAMES BRECK PERKINS.

ROCHESTER, N. Y.

The Origin of the Republican Form of Government in the United States of America. By OSCAR S. STRAUS. With an Introductory Essay by EMILE DE LAVELEYE. Second edition. New York and London, G. P. Putnam's Sons, 1901. — xli, 151 pp.

In the sixteen years that have elapsed since Dr. Straus first published his little book, he has apparently found no reason to doubt the accuracy of its conclusions. Accordingly, a new edition now appears, slightly revised, and accompanied by an introductory essay in the familiar vein of the genial and prolific Professor de Laveleye, since deceased. The thesis of Dr. Straus is well known. It is that the adoption of a republican form of government by the people of the United States, after the separation from Great Britain, was largely influenced, if not absolutely determined, by the example of the Hebrew commonwealth, as described in the Old Testament. In support of the contention the author sets forth with some particularity, first, the pre-Revolutionary dread on the part of the Puritans lest an American episcopacy should be established by the British government and, second, the exploitation of Old Testament history and prophecy that constituted the staple of the discourses of the Puritan ministers who supported the cause of the patriots. The facts adduced are considered to prove that ecclesiastical influences were potent in bringing on the Revolution and that, when once independence had been resolved upon, the widespread conviction that God had directly sanctioned republican government for his chosen people, and had inspired the records of that people as a guide for all Christians, rendered monarchy and aristocracy impossible in the new organization that was set up.

The antipathy toward the Church of England in the strongly Puritan, and indeed in the other, colonies is a commonplace of history; and it cannot be doubted that this played some part in the

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development of revolution. But that the example of the Israelites under the Judges effectively predisposed the Americans toward democracy or republicanism, is a proposition that demands for its demonstration a much more convincing array of evidence than Dr. Straus presents. His argument is bizarre from two points of view. In the first place, it is a staggering conception that

> the children of Israel on the banks of the Jordan . . . not only recognized the guiding principles of civil and religious liberty, "that all men are created free and equal," that God and the law are the only kings, but also established a free commonwealth, a pure democratic republic under a written constitution, "a government of the people, by the people, and for the people." [Chap. VI, end.]

In a note the author, in this new edition, disclaims responsibility for the view of the Hebrew state laid down in the chapter which contains this passage, and declares that he is "chiefly guided" by the view held by the men of Revolutionary times; but the concluding phrases have an exceedingly modern sound, and are at least ill adapted to express the convictions of any one who lived before Abraham Lincoln.

In addition, however, to the remarkable idea that the Israelites stood for civil and religious liberty, the argument of Dr. Straus precisely inverts the relation of the Biblical doctrine to the Revolution and its consequences. It was not theories, but conditions, that made the revolution and the reorganization that followed. In defending and explaining the political development, the ministers resorted to the Scripture because it was their most familiar ground. They explained the situation in terms of the Old Testament history and prophecy, just as the lawyers explained it in terms of the English constitution, and as the historical students explained it in terms of Greek and Roman institutions. That Thomas Paine and Benjamin Franklin, whose acceptance of Christianity was so qualified, should have appealed to the Scriptures for support to the patriot cause, does, indeed, suggest that there were elements among the people to whom such an appeal would be attractive and convincing. But it does not prove that the revolution and reorganization happened only or chiefly because of the appeal.

By Dr. Straus's method of reasoning it could readily be proved that practically every extraordinary, or even ordinary, political or social phenomenon since the fourth century A.D. was chiefly inspired by the ancient Israelites. The Rev. Jonathan Mayhew

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and the Rev. Samuel Langdon were not the first divines to discover that the policy they favored was foreshadowed by the Old Testament. The mediaeval literature of politics had consisted of little else than wearisome demonstrations that current problems had been solved centuries in advance in Mesopotamia, Egypt, Moab and Canaan. Moses, Joshua and Gideon had been mercilessly driven in order to fulfill the demands made upon them. Ehud and Judith had justified every assassin that raised his hand against an unpopular ruler. Saul and Samuel, David and Nathan, Ahijah and Jeroboam had done yeoman's service in determining the relation of secular to ecclesiastical authority. And Daniel and Ezekiel and Jeremiah had furnished the medieval fancy with material for endless exercise. In view of these facts, the various institutions of the middle ages, as well as the government of the United States, must be ascribed to Israelitish sources. It is proper to say, however, that no mediaeval writer, so far as the reviewer is aware, ever ascribed to the Hebrews the belief that all men are created equal, or an interest in civil and religious liberty. The fate of the Amalekites and the Canaanites in general, and of those who from time to time preferred Ashtaroth and Baal to Jehovah, seems to have made more impression on the mediaeval mind than on that of Dr. Straus. WM. A. DUNNING.

The Law and Policy of Annexation — with Special Reference to the Philippines, together with Observations on the Status of Cuba. By CARMAN F. RANDOLPH. New York, Longmans, Green & Co., 1901. — xi, 226 pp.

One does not need to read many pages of this book to discover that its author, in spite of strong convictions on the questions both of law and of policy connected with the acquisition of the Philippines, has succeeded in preserving a moderation of tone that is often lacking in current discussions of these subjects. He has not been so successful, however, in preventing his feelings from influencing his judgment upon the matters of law involved, and as a result the book is so one-sided that many who are inclined to a view contrary to that taken by the author will perhaps lose sight of the ability with which the questions at issue are discussed.

The first two chapters deal with the acquisition of the Philippines by the United States and their general status in our governmental system after annexation. After showing that our title under international law is unimpeachable, Mr. Randolph argues that the islands

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are a part of the "United States," using that term to describe "the dominion of a sovereign nation, . . . a territory larger than the area of the States, but, at present, smaller by the area of Cuba than our 'international' territory"; from which he draws the conclusion that whatever of lawful authority the national government exercises in the Philippines is derived from the constitution.

The reasoning in these two chapters shows in many ways an unusually clear conception of the principles upon which our constitutional system is based, but fails at a crucial point, in holding (page 46) that, "as the government must rely on the enabling provisions of the constitution for authority to act at all, it must rule its conduct according to the restraining provisions." As a general proposition, this may be true enough; but in the connection in which it is used it is at least misleading, as it seems to imply that a power, in order to be constitutional, must necessarily be limited. In fact, it is upon this very proposition that Mr. Randolph bases his argument that the limitations on the government in behalf of civil liberty, contained in the so-called Bill of Rights, are operative in the Philippines. Is it not, however, conceivable that the constitution might have contained a clause expressly vesting in the national government absolutely unlimited power over the territories of the United States? In that event, while the authority to act would have been derived from the "enabling provision," the government would not have been subject to the "restraining provisions" which limited it within the borders of the states. In fact, is not the very statement of the problem, in the form of a question as to whether the constitution extends of its own force to newly acquired territory, misleading and confusing? Must we not rather, while recognizing that whatever authority the government of the United States lawfully possesses in the Philippines is derived from the constitution, proceed to inquire what limitations, if any, the constitution places upon that authority? From this point of view, Mr. Randolph's argument is seen to leave the vital part of the question untouched, and is for that reason unconvincing.

Chapter three discusses the questions of the status and rights of persons, and the taxation of foreign and domestic commerce, which have been raised in connection with our recent acquisitions. The author maintains that the Porto Ricans and Filipinos (with the exception of those who are to be classed as members of Indian tribes) are citizens of the United States, on the ground that those born before annexation have been duly naturalized by the treaty, and that those born since that time are citizens by birth, having been "born in the

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United States and subject to the jurisdiction thereof." The former of these two propositions seems open to considerable doubt, which Mr. Randolph's argument does little to dispel. To say (page 64) that "the United States do not divide their people into subjects and citizens" is merely to beg the question, which is, whether the constitution permits such a division and, if so, whether it has been made. It would seem, under the decision in Elk *v.* Wilkins (112 U. S. Reports, 94), that an Indian, born a member of an organized tribe, but who has severed his tribal relations and taken up his residence among the white population, is a subject but not a citizen of the United States. Would the author maintain that, under the constitution, the President and Senate could not, in the treaty with Spain, have expressly excluded the Filipinos and Porto Ricans from citizenship; and that the act of annexation must always be an act of naturalization of such of the inhabitants of the annexed territory as do not elect to retain their former allegiance, where permitted to do so by the treaty? If not, can the conclusion be escaped that, whether the inhabitants of our new territories are citizens of the United States or not depends upon the intention of the President and Senate, as expressed in the treaty with Spain? This question of the citizenship of the Filipinos and Porto Ricans seems to have had a greater importance attached to it than it deserves, in view of the fact that the fundamental civil rights are guaranteed by the constitution to all persons, and not merely to citizens of the United States. If it be once decided that the "Bill of Rights" is in force in the Philippines, the Filipino will be protected by its provisions, whether he be regarded as a citizen or a "subject" of the United States.

With reference to commerce, Mr. Randolph argues that the clause of the constitution requiring uniformity in duties, imposts and excises demands that all indirect taxes for national purposes shall be levied uniformly throughout all territory under the jurisdiction of Congress; and, while admitting that it is an open question whether Congress may not, acting as a local government, levy additional indirect taxes on foreign commerce for local purposes, is inclined to think that the imposition of duties on imports from our mainland into Porto Rico, even for local purposes, "contravenes a purpose of the uniformity clause of the constitution," and should therefore be regarded as unconstitutional.

Chapter four is devoted to the powers of the President and of Congress in governing the Philippines. The author holds that all acts of the President in the Philippines, of a legislative nature, since

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the ratification of the treaty with Spain, have been a usurpation of the powers of Congress. This is based on the assumption that the termination of the formal war with Spain necessarily put an end to the war power of the President, under which, it is admitted, such legislation would have been legal. This assumption will, of course, be disputed by those who hold that the President governs in newly acquired territory by virtue of his war power until such time as Congress, by legislating for the territory, introduces civil government. The Spooner amendment to the Army Bill, vesting all governmental power in the Philippines in the President and his appointees, is dismissed as "a halting measure of doubtful legality," the reason being, apparently, that "Congress may not delegate legislative power to the President." That another view may be taken I have attempted to show in a previous number of this QUARTERLY (March, 1901).

Under the title, "The Alienation of the Philippines," Mr. Randolph in chapter five leaves the field of law for that of policy, and expresses the view that "the annexation of the Philippines is not a cross to be borne, but a blunder to be retrieved." He would have the United States withdraw its sovereignty from the islands and undertake a protectorate over them, and indicates in a general way what, in his opinion, the relations between our government and that of the future Philippine state should be.

Some twenty pages at the close of the book are devoted to a series of interesting "Observations on the Status of Cuba." The views advanced will doubtless in the main be acquiesced in by all publicists, and do not demand detailed statement here. An appendix contains the text of the joint resolution of Congress in regard to Cuba, the declaration of war, the protocol, the treaty of peace, and a few documents illustrative of some of the methods by which other nations have established protectorates of one form or another.

WALTER WHEELER COOK.
UNIVERSITY OF NEBRASKA.

Reflections on the Origin and Destiny of Imperial Britain. By J. A. CRAMB. London and New York, Macmillan & Co., 1900. —315 pp.

This work by Professor Cramb, of Queen's College, London, constitutes "part of the more theoretic sections of a larger work, *The Origins of Imperial Britain.*" It is, therefore, what Emerson would call "transcendental politics." Possibly this may account for the fact that it promises much more than the results warrant.

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It is, indeed, an irritating and disappointing book, which begins everywhere and ends nowhere, and is written in a style verging on the sophomoric. Some of these defects, however, may be due to the form and the evident haste of composition. It embraces seven lectures, bearing date from May 8 to July 10, 1900. If the author is a fair criterion, the English people must have been utterly shaken out of their characteristic imperturbability; for he certainly takes himself, his subject and the Boer war with the utmost seriousness. Were England contending in arms against all Europe at once, he could not strike a more heroic tone — nor make a more lavish use of capitalized adjectives and exclamation points. His encomiums of the "death-defying valor" of the British troops appeal irresistibly to the reader's sense of humor, when he remembers their extreme readiness to surrender and the absurd disparity of forces.

Nevertheless, the book has some meat. Its scope will appear from the lecture headings: I, "What is Imperialism?"; II, "The Development of the Political Ideal"; III, "The Development of the Religious Ideal"; IV, "The War in South Africa"; V, "What is War?"; VI, "The Vicissitudes of States and Empires"; VII, "The Destiny of Imperial Britain and the Destiny of Man." The view-point, while not entirely consistent throughout, is in the main that of the organic school. In fact, the organic theory is very skillfully brought to bear against the prevalent practice of judging international relations and actions by the same standard as those of individuals, the contention being that such identity of standards can be assumed only in case a nation is merely a collection of individuals, which the organic theory expressly denies. For example, the individual is bidden to prefer another to himself; but there can be no such law for nations. "In the faith that it and it alone can perform the fate-appointed task, dwells the virtue of every imperial race."

By "Imperial Britain," however, the author does not mean the British Empire, but rather "the informing spirit, the unseen force from within the race itself." The book is thus essentially a study, not in history, but in mass-psychology historically considered. Concerning the origin of this "informing spirit," he says:

> In the history of every conscious organism, a race, a state, or an individual, there is a certain moment when the unconscious desire, purpose or ideal passes into the conscious. Life's end is then manifest. . . . In the England of the seventeenth century, the conscious deliberate resolve to be

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itself master of its fate takes complete possession of the nation. . . . Another ideal . . . has slowly advanced . . . the ideal of Imperial Britain . . . an empire resting not on violence but on justice and freedom.

This new ideal originated, the author believes, in the humiliations of the fifteenth century, which were for medieval England "what Syracuse was for Athens and Cannæ for Rome." Applying the law of tragic Katharsis to history, he declares that "the ἐνέργεια τῆς ψυχῆς . . . the spring of political wisdom, the foundation of the greatness of a state . . . is the immortal energy which arises within the consciousness of a nation, or in the soul of an individual, as the result of that hour of insight, of pity, of anguish, of contrition." It was this ideal which worked itself out alike in constitutional government and religious toleration; which spoke in Burke's impeachment of Warren Hastings and in Chatham's defense of the American Colonies; which inspired Wilberforce, Canning and the long line of English Liberals.

Imperialism is thus taken to mean Liberalism. The fundamental thesis of the book is contained in the definition: "Imperialism is patriotism transfigured by a light from the aspirations of universal humanity." The preceding empires of Europe were wrecked by the Roman ideal of power or, at most, of justice. But this new imperialism, starting from and based on freedom, is neither Hellenic nor Roman, but essentially British. It is in behalf of this ideal of imperialism, he maintains, that England has gone to war in South Africa. But while this new imperialism overrides the bounds of nationality in the name of humanity, it is not cosmopolitanism, which is well defined as "an attitude of mind purely negative, characteristic of protected nationalities and of decayed races." Ireland is "England's inheritance from the days of her blindness . . . when as yet she knew not the path of empire, the path of her peace." And of the proposal to allow independence to the Boer states, he says: "It is not the narrowed bounds we have to fear: it is the judgment of the dead, the despair of the living, of the inarticulate millions who have trusted to us; it is the arraigning eyes of the unborn. Who can confront this unappalled?"

Certainly, if the Boer war is to be justified, this is the only line of reasoning that will do it. But as to whether the author has made out his case, opinions will differ.

EDWARD VAN DYKE ROBINSON.

ST. PAUL, MINN.

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Great Britain and Hanover. By ADOLPHUS WILLIAM WARD, Litt.D. London, Edinburgh and New York, The Clarendon Press, 1899. — vi, 218 pp.

This volume contains the Ford Lectures delivered at the University of Oxford during Hilary Term, 1899. They relate to the "personal union," based on allegiance to the common sovereign, which was established between Great Britain and Hanover, by the accession of George I to the English throne. The first lecture, which is introductory, is occupied with the history of the House of Brunswick prior to that time, with a view to throwing upon the policy of the earlier Hanoverian reigns any light that may be derived from a study of the historical traditions of the dynasty, and more especially of its political action from the Peace of Westphalia to the Peace of Utrecht. The rest of the lectures relate chiefly to the settlement of the English succession and the reigns of George I and George II. They enter only slightly into the reign of George III. The historical connection between the two countries, which lasted a hundred and twenty-five years, ended only with the accession of Queen Victoria. The author observes, however, that it was brought home to both peoples for the last time by the battles of Quatrebras and Waterloo, and he does not undertake to trace it after that time.

The condition of the English court, if it can be so called, during the reigns of the first two Georges forms one of the most curious chapters in the nation's history. According to contemporary accounts, which there is no reason to doubt, "the personal *entourage* of King George I," says Dr. Ward, "from his body-servants upwards, consisted, with the exception of Mahomet and Mustapha, entirely of Germans." During the reign of George II this condition of things was only mitigated, but not radically changed. Under these circumstances, English statesmen, who sought to prevent the subordination of the interests of their country to those of the electorate, were required to exert the greatest strength and skill, and the extent to which they succeeded is remarkable. Nevertheless, Dr. Ward classifies, as "in part at least beyond all question clap-trap," the denunciations which most of the leading English politicians of those reigns, and the great body of public opinion at various times, launched forth against Hanover and Hanoverian influence. When we consider, however, the nature and the methods of political contests, it is not surprising that the situation gave rise to some extravagance of suspicion, as well as of accusation.

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Dr. Ward's pages bear the impress of care and thoroughness, and embody the results of a more special study than had previously been made of the subject to which they relate.

J. B. MOORE.

Annals of Politics and Culture (1492–1899). By G. P. GOOCH, M.A., with an introductory note by Lord Acton. Cambridge, The University Press, 1901. — 530 pp.

To compress all modern history, "embracing the life of mankind in its entire range of thought and action," into simple monkish annals, and then to enliven the result by a double-entry system of book-keeping, is certainly a unique performance in historical work. The underlying idea of Mr. Gooch's work is not exactly new — a chronicle with an index; but no one has ever before thought of applying to the literature, art and science of modern times this simple method of classification — by dates. The plan of the book, which is somewhat more original than the idea, is to deal with "politics" and "culture" on opposite pages and keep them as closely parallel as possible, in order that the reader may see at a glance what was taking place in the chief departments of thought and action at any given moment. Each event or paragraph is numbered, and these numbers only are entered in the index, from which one turns to the body of the book to find briefly summarized the fact which he is looking up in its appropriate chronological place. The value of this in a ready reference book must be evident. But the text is hardly full enough to be of much aid to any but experts in the various subjects touched upon. For example, the student sees in the index "Böcklin 3105," and on turning to the given paragraph he finds under the year 1856 the words "Böcklin's Pan." This is the only reference to Böcklin in the book. Paragraph 3016 gives the information that in 1850 "Titus Salt founds Saltaire works" — upon which incident the index gives no light either under Titus or Salt or Saltaire. In paragraph 3765 we are told of the death of Bunsen. The index has no record of this, and we must find that the death notice of Bunsen, "the diplomatist," is paragraph 3169, before we can even infer that the chemist is referred to. Indeed, the index is not complete, especially with reference to the last hundred paragraphs in the book.

If the *Annals* will not be of great value to the uninitiated, it will disappoint those who have some knowledge of what the items refer to in the different subjects. For instance, the information that

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in 1668 Newton "discovers gravitation" is certainly wrong, and in paragraph 1335 "Newton states the three fundamental laws of motion" conveys the impression that all three were first formulated in 1687. The only reference to the physiocrats is under the date 1758 and would lead one to think that the work of Quesnai, of Gournay, of Dupont de Nemours and the others centered about that one year. It is easy to see the difficulty of classifying "culture" by dates. With regard to large events, such as the Renascence, the Protestant Revolt or the French Revolution, the editor has boldly taken the bull by the horns and makes no mention of them in his index.

When we turn to the bibliography, the disappointment becomes greater. Apart from misprints (Law for Low, Bury for Berry, Poggendorff with one *f*, Waliszewski with the *z* and without it, and other small slips), one finds the titles abbreviated so as to carry no explanation. "Poole's *Turkey*" and "Julleville's *Littérature Française*" are misleading. "Krones' *Oest. Gesch.* 5," and "*Grundriss*" give no idea of the works whatever, and late Austrian historians are not mentioned. But one need not delay over details; for the bibliography, like the rest of the book, conveys no message to the inexperienced, and the scholar will not find many crises in his life in which he will turn to it for guidance.

J. T. SHOTWELL.

COLUMBIA UNIVERSITY.

An Introduction to English Politics. By JAMES M. ROBERTSON. New Amsterdam Book Company, 1900. — 515 pp.

The title of this work gives little clue to its real character. It is an essay in general sociology, or what used to be called the philosophy of history. Buckle is the obvious model. In fact, the argument is in many points a restatement of Buckle, to meet the objections urged by critics. The author also follows his model in devoting most of his space — 390 pages out of 503 — to a preliminary consideration of other countries, including Greece, Rome, Islam, the Italian republics, Scandinavia, the Hansa, Holland, Switzerland and Portugal.

The general thesis of the book is that all forms and manifestations of human activity derive from and are dependent upon economic conditions. This proposition is admirably worked out for each country and each phase of activity considered. No one interested in the economic interpretation of history can afford to neglect it.

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The author has shown in detail the connection between increasing population, on the one hand, and poverty and war, on the other. He is one of the few writers who have really grappled with the relation of industry to war, without abandoning themselves to hysterical gush. In this connection he has brought to light the economic causes for the rise and decadence of states and nations, and for the differentiation of progressive from unprogressive civilizations. His procedure is not without interest, even when, having shown that all previous Utopias were fools' paradises, he constructs one of his own by setting up the ideal of perpetual peace and progress, to be attained through a scientific restriction of the population — in entire forgetfulness of the fact that progress has been attained hitherto only through the constant pressure of population on the means of subsistence.

The author evidently prides himself chiefly on the theoretical side of his work, but this is precisely his weakest point. Certain fixed ideas crop up at every turn, such as his rooted hostility to religion, especially Protestant Christianity, which reminds the reader of Andrew McGoggin in Kipling's tale, and his conviction of the superiority of the Celt and the general inferiority of the Teuton, especially the Anglo-Saxon. Allowance may be made for these ideas, as a part of the author's personal equation. But there are philosophical paralogisms and contradictions with which it is difficult to reckon. Especially confusing is his haziness relative to the organic theory of society. On the one hand, he is a thorough-going political nominalist, who maintains that only the flesh-and-blood individual really exists; and he never wearies of repeating that race, national consciousness, social organism, *etc.*, are "pseudo-entities," that patriotism is "superstition" and that all arguments founded on these concepts are "hallucinations." Yet, on the other hand, his social philosophy is distinctively collectivist in tendency, and he never goes far without employing, even to excess, the very concepts and reasoning which he denounces.

This confusion of ideas has led him astray on another vital point of theory. In opposition to the whole trend of modern science, which emphasizes the fact of blood, the force of heredity, he maintains that development is determined by environment alone, excluding race altogether as a factor. He regards all men of all races as not only potentially, but actually, identical in nature and capacity, like atoms of the same chemical element, which develop different qualities only by reason of different external contacts. He even predicts for Brazil a future transcending that of North America,

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basing his prediction on two grounds: first, that the population "quietly embraces [amalgamates with] the coloured types of South America and Africa" and, second, that coal is lacking (pp. 383, 388, 389). This denial in man of what even he would not deny in the case of blooded stock is one of several indications that in matters of theory he really belongs to the pre-scientific age of thought — the age of Voltaire, Bentham and the metaphysical radicals generally.

In the matter of references, French works of a century or more ago seem to have the preference. Modern German works are often not mentioned; *e.g.*, neither Busolt's nor Beloch's, on Greek history.

A minor blemish is the eccentric and at times incorrect use of words: for example, "deleted" (destroyed), "worsening," "climaxing," "dispeace," "arbitrament" (arbitration), "back throw," "ultra-racial" (extra-racial), "sociological" (social) development.

There is one bull worthy of Sir Boyle Roche. "Turkey," he says, "needs only new habits to develop her natural resources." A certain young man once insisted — and rightly — that he could have written Shakespeare's works if he had only had a *mind* to!

EDWARD VAN DYKE ROBINSON.

North American Forests and Forestry. By ERNEST BRUNCKEN. New York, G. P. Putnam's Sons, 1900. — 262 pp.

Although the subject of forestry has been very generally discussed in magazines and newspapers, there still exists a great deal of confusion in the public mind as to the real nature of the science. People have come to realize that our forests are being rapidly cut over and that some provision must be made for a future supply of wood and timber. Forestry has been pointed out as the remedy, but it has not been clear to most persons what forestry really is and how it will save the forests.

Mr. Bruncken's book has been written to set before the public in a popular way the forest problem in this country and to explain how it can be satisfactorily solved. The conception of the book is admirable. The author begins by discussing the American forests, and he tells in an interesting way many facts relating to the life and habits of trees and forests. He then treats of the practical financial questions which must be solved by the forester — questions which are often overlooked by enthusiastic advocates of forestry. Mr. Bruncken makes very clear the difficulties in the way

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of forestry, resulting from the prevalence of forest fires and excessive taxation. These are practical problems which are troubling landowners in most extensive forest areas, and the author very wisely asserts that they can be solved only through the aid of the state or government. The author describes in considerable detail what stand forestry must take in this country, showing that in many places European methods cannot be used at once and that practical foresters are not endeavoring to introduce measures which are not suited to our conditions.

The book is a sound and fair presentation of its problem. The author has succeeded well, wherever he has confined himself to the economic side of the question. In his discussion of technical points, however, he sometimes fails. His book would have gained in value, if he had presented his scientific facts in a more systematic manner. This could have been done without any loss in clearness or interest.

He describes his first chapter as "cursory observations on the inner life of the forest," and states that he has "almost at random picked out a few phases" influencing the struggle in the forest. This is exactly the impression received on reading the chapter. If the author had arranged his material, which is of real value, in a less "random" and "cursory" manner, he would have given his book considerable strength.

H. S. GRAVES.

YALE FOREST SCHOOL.

Railway Operations: How to know them. From a study of the accounts and statistics. By J. SHIRLEY EATON, Statistician of the Lehigh Valley Railroad. New York, The Railroad Gazette, 1900. — xix, 313 pp.

This compact little volume is an exceedingly valuable contribution to the study of railway economics. Most practical traffic officials are under too great pressure of routine work to be able to analyze their operations on paper for the benefit of others. With the notable exceptions of Fink, Blanchard, Stickney, Walker and a few others, all of our systematic information about railroads has been derived from unofficial sources. This book was apparently designed primarily for the operating expert; but it is so packed with useful material that the larger public has been laid under distinct obligation to the author.

The scope of the volume may best be indicated by giving some of the chapter headings. Under "Hints for Examining Railway Property" is discussed the significance of income accounts, the nature of

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the balance sheet, relations between gross and net earnings, *etc.* The second chapter, "Watching Freight Traffic Currently," discusses tonnage statistics and the nature of competitive business — incidentally emphasizing a point which governments would do well to note, *viz.*, that statistics to be of any use must be "fresh." "Watching Expenses" and "Reducing Expenses" constitute perhaps the best portion of the book. More food for reflection on the short-sighted policy of "horizontal" reduction of expense during periods of depression is contained in Chapter V than we remember to have seen in any similar work. Its terse and pointed analysis suggests that the author has had intimate personal knowledge of the difficulties of operating a "rusty" railroad.

Chapters VII, XIV and XV deal with statistical methods and units, such as car, train, ton and engine mileage, the principles and fallacies of averages, and the principles and practice of prorating. Some of these topics admirably supplement the discussion in Woodlock's *Ton-Mile Cost*; inasmuch as Eaton's point of view is that of operating cost, while Woodlock's is rather fiscal, as bearing on net revenue and investment value.

The remainder of the volume is less interesting, though none the less valuable, including in the main a commentary upon the Interstate Commerce Commission's classification of expense and income accounts. Nearly all American railroads have now come to an agreement as to policy in this respect. The great exception is, perhaps, the Southern Pacific Railroad, which adheres to a peculiar system of its own. Of interest as bearing upon this discussion, by the way, is Prof. Henry C. Adams's report to the United States joint commission to investigate the postal service, as to the cost of railway mail service.

The only criticism to be directed against this admirable little book is its rather choppy style and its overdone compactness. It leaves an impression, no doubt justified by the conditions under which it was produced, of having been written under great pressure. Its acute analysis at many points, however, gives certain promise of ability to contribute still further in the future to the formation of a railway literature of a professional, rather than an academic or political, character. It cannot fail to arouse discussion as to many vital points of policy in railway management now imperfectly understood by teachers, and apparently to some degree also by railroad men themselves.

WILLIAM Z. RIPLEY.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY.

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A History of the Latin Monetary Union. A study of international monetary action. By HENRY PARKER WILLIS. Chicago, The University of Chicago Press, 1901. — 332 pp.

Now that the bimetallic question has ceased to belong to partisan politics and the fury of the controversy has subsided, it is to be hoped, and indeed it is to be expected, that the whole field will be carefully resurveyed in a more judicial spirit. The theoretic aspects of the subject have already found unprejudiced and catholic treatment at the hands of several writers, notably Major Darwin, and what is most needed in this connection is a scholarly and unbiased interpretation of monetary history. The history of the coinage in England and in European countries, and even in the United States, must be reëxamined and reëxplained by those who have no theory to exemplify and no position to defend. No part of this history has stood in greater need of such liberal treatment than that of France and the Latin Union, and the appearance at this time of a considerable work devoted to the monetary history of these countries, especially from the hand of a university professor, is therefore calculated to arouse an unusual measure of expectancy among those interested in such questions.

It is a distinct disappointment to find that the present work, like most of its predecessors in the same field, falls seriously short in the important matter of impartiality. Professor Willis announces that "he has not sought to pass any criticism upon the policy pursued by the states of the Latin Union" and that his object "has been merely that of placing in a colorless historical light the action taken" by them (p. 253). Above all, he denies any intention "to enter into the merits of the monetary question as such" (p. viii) or "to correlate the silver question, as it exists in France and the allied countries, with the more general aspects of the monetary problem" (p. 253). In the face of all prefixed and appended disclaimers, however, it must be said that Professor Willis expresses his opinions very freely, not only by innuendo but by direct statement as well. One finds him speaking about "the farce of a double standard" (p. 47), or alluding to "scientific monetary principles as embodied in the program of the gold party" (p. 161), or characterizing the bimetallic members of the commission of 1867 as without "any economic competency" (p. 76), or implying that the government, after the issue of the bimetallic report of that year, needed "an opportunity to retrieve itself in a dignified way" (p. 77). In fact, there is scarcely a page that is not colored with the author's opinions.

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Even in the selection of data the influence of his preconceptions can be felt. Take, for example, his treatment of the French law of 1803. He tells us that in its early history it "had never been regarded as a bimetallic law" (p. 7, note), that "the standard intended to be established was manifestly silver," the gold coins "being regarded merely as stamped ingots" (p. 8), that "in all the debates upon the monetary question from 1789 to 1803 the sole desire had been to set up a single invariable silver standard" (p. 95), and that there is "conclusive evidence" of this, in confirmation of which he quotes from Gaudin, the finance minister whose reports led to the passage of the act (p. 95, note). There is much, however, to be said upon the other side. The primary aim of Gaudin's report of 1803 was to emphasize the need of making the gold coins an integral part of the currency system. Gaudin explicitly opposed the plan of leaving them to circulate as merchandise, without any definite rating in terms of silver — the plan which had been advocated by Mirabeau and Berenger; and he insisted upon the necessity of establishing a fixed and determinate ratio between the coins of the two metals, recommending the continuance of the ratio of 1785. This was essentially a bimetallic proposal, but of these facts Professor Willis makes no mention. Moreover, the actual law of 1803 provided for the free and unlimited coinage of both metals; and, although the ratio between them was not literally mentioned, the mere fact that the gold and silver coins were given the same name, franc, by the act which determined their weight practically established such a ratio. A bimetallic standard was indisputably the implicit result of these provisions; for they involved the free coinage of both metals at a fixed ratio and their legal equivalence as means of payment. Thereafter a debt calling for payment in francs could be paid indifferently in coins of either metal. To these facts likewise, however, Professor Willis fails to call attention.

The same one-sidedness which characterizes his treatment of the act of 1803 also marks his discussions of the treaty of the Latin Union. "The treaty of 1865 did not adopt bimetallism," he tells us. "It continued the fundamental principle of the law of 1803" (p. 217). "It was not a bimetallic agreement any more than the law of 1803 was a bimetallic agreement" (p. 46). "From whatever point of view we regard it, it is abundantly clear that the treaty was in no sense intended as a bimetallic agreement" (p. 45). Yet the treaty had provided for the coinage of both gold and silver at a fixed ratio, without restriction as to amount, and had made the coins of both

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metals receivable in the public treasuries at this ratio. Professor Willis himself finds it impossible always to be consistent with his theory; for somewhat later even he speaks about "the principle of the double standard as provided for in the treaty of 1865" (p. 73).

Not only are the conclusions at which he arrives frequently unwarranted by the facts which he presents, but they are sometimes even contradicted by these facts. We are told that "the law of 1803 did not secure a concurrent circulation of gold and silver" (p. 6), that "a concurrent circulation of gold and silver had *never* been seen in France" (p. 8), that down to 1847 there was "an *exclusively* silver circulation" (p. 15; the italics are added). Yet the figures which Professor Willis quotes in evidence show only an insignificant loss of gold to the country during the entire period — a net export of about 300,000 francs per year, on the average; and, on the other hand, they show that there was never a year when gold was not coined, the average during the years from 1803 to 1848 amounting to about 23,000,000 francs. Even the testimony of contemporaries, which our author cites to prove the absence of gold from the circulation, practically all implies its presence to some extent. Thus, from the *Enquête* of 1858 is drawn the assertion that gold "became quite rare [*sic*] in the circulation," and the commission of 1868–69 is quoted as stating that "in 1848 almost [*sic*] all of this gold had disappeared" (p. 4, note), which are evidently quite different matters from saying that the circulation was "exclusively" of silver.

Professor Willis argues in this connection that, "inasmuch as gold was more valuable in the market than at the French mint, relatively to silver, it was impossible that gold should circulate in France" (p. 2). Every careful student of monetary theory, however, knows that the market ratio can vary from the mint ratio within a considerable range without driving the undervalued metal from circulation. It was quite possible that gold should circulate in France, even though the market ratio between the metals did rise somewhat above 15½ to 1; for the seigniorage charged on the coinage of gold raised the gold coins above their metallic value and made it unprofitable to melt them down or send them abroad, unless the premium on bullion rose above the seigniorage on the coins. The market ratio in London or New York might rise still higher above the Paris mint ratio without draining the French currency of its gold, because the profit on the exportation of the metal would be absorbed by the cost of its transportation and insurance and the loss of intercalary interest.

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The substitution of gold for silver in the circulation in the early fifties was, according to Professor Willis, a source of unmitigated benefit and of unalloyed gratification to France. Even the reduction in the rate of London exchange is attributed to it.

> Exchange had, between 1819 and 1852, frequently risen as high as 25 francs 90 centimes per pound sterling payable at London, while since 1852 exchange had not exceeded 25 francs 30 centimes, although during this later period France had been much more heavily indebted to England than during the preceding one (pp. 101–102).

No mention, however, is made of other reasons for this, such as the inevitable lowering of the specie-shipping point in the course of the half century, through improved facilities of transportation.

We are told that "the transition from a silver to a gold medium of exchange was gladly welcomed by the French people. . . . They did not demand any remedy" (p. 6). A few pages later, however, it appears that a "continual agitation was maintained by the press, and the export of small silver coin was considered a serious matter. Moreover, demands for a remedy were becoming strenuous" (p. 34). The long series of commissions and *enquêtes* is itself evidence that the change was not regarded with equanimity.

The bimetallic standard, according to Professor Willis, was "out of harmony with the verdict of nearly all of the government commissions held both before and after 1865" (p. 57). Yet, according to his own account of these commissions, it was not inconsistent with the reports of the commissions of 1858, of 1860–61 or of 1867, or indeed of any French commissions reporting before 1868. His statements that "the economic world was in accord in recognizing the impossibility of the double standard" (p. 38) and that this standard was "distasteful to business interests in general" (p. 57) are sweeping generalizations that could be denied upon evidence which he himself gives elsewhere. Similar instances of inconsistency and of biased interpretation might be multiplied indefinitely.

The conclusion which Professor Willis draws at the end of his study is characteristic. "The Latin Union as an experiment in international monetary action," he asserts, "has proved a failure" (p. 267). This few would be inclined to dispute; but he goes further and implies that difficulties similar to those which the Latin Union has encountered are likely to stand in the way of "*any* international attempt to regulate monetary systems" — which is by no means a necessary corollary. The inconveniences that the Latin

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Union has involved have been due primarily to the provision by which each government agreed to accept the coins of the other governments as legal tender, and the history of the Union plainly shows the impracticability of such an arrangement. It throws very little light, however, upon international agreements of other sorts.

Among minor errors of fact may be mentioned the statement that Holland had definitely passed to a gold standard before 1874 (p. 135), and the assertion that Belgium guaranteed France, by the treaty of 1885, that the balance due should not exceed two million francs (p. 234). This should be two hundred millions.

Professor Willis's account of the Latin Union and of its various conferences is evidently based in large part upon a direct examination of official reports and contemporaneous publications. It presents much valuable material. It contains many details which were not easily accessible before, especially with regard to the experiences of the smaller states, and with regard to the problems and discussions of the later conferences. For these reasons the book deserves a place in all collections of monetary literature. One can only regret that the labor expended was not joined with a more judicial temper, so that the result might have been authoritative and final.

A. PIATT ANDREW.

HARVARD UNIVERSITY.

Slavery as an Industrial System. Ethnological Researches. By DR. H. J. NIEBOER. The Hague, Nijoff, 1900. — xx, 474 pp.

While the literature on slavery is considerable, there has not yet been a satisfactory attempt to give a thorough-going explanation, on economic lines, of the rise and development of this important institution. Of the two English books of any account, that of Cairnes is frankly unhistorical and that of Ingram is so slight and so eclectic as to be of little use. In foreign languages the only attempts deserving of notice are those of the Italians. Ciccotti, in his book *Il Tramonto della schiavitù*, gives an interesting but somewhat one-sided description of slavery in Greece and Rome; while Loria, who has done the most to clear up the topic, has treated of slavery as only one among the many economic phenomena in his comprehensive survey. The French and German works on slavery are practically useless. The ordinary encyclopedias and text-books are filled with conventional accounts which are neither enlightening nor conclusive. It was high time that an effort should be made

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to discuss the history of slavery in the light of the progress of modern ethnology and of recent historical economics.

The volume before us is evidently the work of a young man hitherto unknown, who has carried on his investigations in Holland under the direction of his teacher and friend, Dr. S. R. Steinmetz, the eminent ethnologist and comparative jurist. It is fortunately written in English, and in very good English at that. The work is something entirely unique in economic history. In the first place, Mr. Nieboer has ransacked the stores of ethnological literature for his facts. His list of authorities covers twenty-three pages, almost all of the items being books of description and travel; his exceedingly detailed accounts cover every part of the habitable world. In the second place, Mr. Nieboer gives evidence of critical ability. He subjects his materials to a thorough analysis, comparing the descriptions of the same tribe by different writers and estimating the importance to be assigned to the statements of each. Having ascertained the facts, he proceeds to inquire what conditions govern the occurrence of the phenomena observed. Advancing in turn the various hypotheses that may be assumed to account for the phenomena, he ascertains by a process of exclusion that each explanation in turn is insufficient, until he arrives at a general rule under which all the facts in each epoch can be subsumed. In this way he is able to reach a fairly satisfactory conclusion. The existing explanations are all of them found to be inadequate. Letourneau's conclusions, in his *L'Évolution de l'esclavage*, contain nothing but the hackneyed evolutionary phrases. Ingram's theory is vitiated by his acceptance of Comte's utterly inadequate account of the relation between slavery and religion. Cairnes's principles, while having some applicability to American conditions, do not hold at all with regard to primitive slavery.

Dr. Nieboer, it may be said at once, gives a frankly economic explanation of slavery. It is true that he declares himself not to be a partisan of historical materialism or of the economic interpretation of history. But it is quite evident that he means by this that he does not desire to explain all history in terms of economics. When it comes to the subject of his book, however, he gives an almost exclusively economic interpretation of the great economic fact of slavery.

The volume is divided into two parts, descriptive and theoretical. The descriptive part, covering about one-fourth of the entire work, gives a definition of slavery and distinguishes slavery from

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kindred phenomena. It thereupon describes the geographical distribution of slavery, throughout the world and from the earliest times, going into all the details of the tribes in North and South America, in Australia and Melanesia, in the Malay Archipelago, in India and throughout Africa. In this way an immense mass of material, hitherto never collected, has been massed together.

With the theoretical part we come to some valuable discussions and conclusions. Starting out with the provisional hypothesis that the existence of slavery probably depends upon the economic state of society, Mr. Nieboer gives a classification of the economic stages. He is, of course, not satisfied with the old division into the hunting, the pastoral and the agricultural stages. He shows how Dargum, over a decade ago, proved the weakness of this. He discusses in turn, only to reject it, the scheme of Hahn, which, as economists know, has recently been accepted by Schmoller. Nieboer himself, while accepting the hunting and fishing stage, shows that sometimes it developed into pastoral nomadism and that sometimes it did not. He distinguishes three stages of agriculture: in the first, agriculture is carried on at the same time with hunting and fishing, but holds a subordinate place; in the second, agriculture is practiced to a considerable extent, but not to the exclusion of hunting and fishing; in the third, agriculture provides the principal form of subsistence. The secondary characteristics of these three stages of agriculture, according to Nieboer, are as follows: in the first stage, women only are occupied in agriculture, and habitations are still frequently shifted; in the second stage, the tribe has fixed habitations and lands are generally irrigated; in the third stage, lands are manured, rotation of crops is carried on, domestic animals are used and agricultural products are exported. He also shows clearly the various cross-divisions that may take place. In this way he is able to refer every description of savage or barbarian life to some one of these economic stages.

In each stage Nieboer then collects from his descriptive material the positive and negative cases: that is, he sums up the instances where slavery is found and those where slavery is not found, and tries to explain how the existence or non-existence of slavery in the minority of cases in each stage can be explained away. Starting with the early economic conditions, it is easy for him to show why slaves are not of much use to hunters and that almost all of the positive cases of slavery are to be found on the North Pacific Coast of North America. He explains in detail why fishing is not nearly so

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unfavorable to the existence of slavery as hunting, summing up the circumstances which account for the existence of slavery on the Pacific Coast as follows: (1) The abundance of food; (2) the variety of food; (3) the preservation of food through fixed habitations; (4) the growth of trade; (5) the development of property and wealth; (6) the condition of women; and (7), incidentally, the problems of militarism. He compares conditions here with those of the Australasians, the Indians of Central North America and the Esquimos, and he finds the non-existence of slavery in every case to be entirely compatible with his general theory.

Going on to the pastoral tribes, he shows that slavery as an economic system is of very little importance, the characteristic feature of pastoral life being the existence, not of wealth, but of poverty. Moreover, slavery, when found among pastoral tribes, is due entirely to secondary causes. That is, the slaves perform domestic labor; they are sometimes used in warfare; they are kept as luxuries. With the development of agriculture, however, the conditions of a possible spread of slavery arise. The author treats in detail of the application of capital and labor to land, and of the relation between land and population. In the main, Nieboer accepts the views of Loria, which, as is well known, bear much resemblance to those advanced many years before by Wakefield. The author's own statement is as follows:

All savage tribes, as well as all other nations, may be divided into peoples with open resources and with closed resources. Among the former labor is the principal factor of production. There may be capital which enhances the productiveness of labor, but a man can do perfectly well without these advantages. Among peoples with closed resources, subsistence is dependent upon a limited supply of material resources, which have all been appropriated. These resources may consist in capital or in land. Where subsistence depends upon closed resources, slaves may be kept, but slavery as an industrial system is not likely to exist. There are generally poor people who voluntarily offer themselves as laborers. Slavery, therefore, as a system of compulsory labor, is not wanted, and even where there are no poor men, because all share in closed resources, the use of slaves cannot be permanent. The rich have no interest to keep the laborers in the slave-like state. Among people with open resources, on the other hand, the keeping of slaves is economically profitable, but here again only in such cases where subsistence is easily acquired. Where subsistence is difficult to procure, slavery is not likely to exist. On the other hand, there are several secondary causes, both internal and external, which explain why slaves are sometimes kept by peoples with closed resources, or by peoples

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among which subsistence is difficult to procure, and, on the other hand, why slavery is sometimes absent where resources are open and subsistence is easy to acquire.

He discusses the conditions of land tenure in Polynesia, Micronesia, Melanesia and Oceanica, and proves that slavery in the agricultural stage depends very largely upon the existence of free land. He proceeds to discuss the transition from serfdom to freedom in Western Europe, and to show the inaccuracy of Hildebrand's theory that natural economy leads to serfdom and money economy leads to freedom. Several chapters are added on the condition of women in reference to slavery, on slaves employed in warfare and on the slave trade. Almost nothing is said about Greece or Rome; the great mass of detailed information is confined to the early history of society.

Mr. Nieboer does not pretend to have exhausted the subject. He outlines, at the close of his work, a series of further investigations which are still to be made — such as the different ways in which people become slaves or cease to be slaves, the legal and actual status of slaves, the number and various kinds of slaves, the attitude of public opinion toward slavery and the consequences of slavery. All these subjects are to be treated later on, and we shall await the results with interest. In the instalment which the author now presents, he has accomplished what no one has hitherto done — that is, he has shown in detail the true economic origin of slavery and the real reasons for its existence. He has also incidentally proved that there is no distinction between the slave-labor economy and the so-called trade economy, but that trade is often largely responsible for the existence and growth of slavery. He has, above all, taught us to look for the causes of slavery and of its disappearance, not in any assumed religious or ethical phenomena, but in the facts of economic life itself. While many of his individual assertions will no doubt be traversed hereafter, there is reason to believe that in this book we have the starting point for the real investigation of the future.

EDWIN R. A. SELIGMAN.

L'Industrie dans la Grèce ancienne. Par HENRI FRANCOTTE. Bruxelles, Société Belge de Librarie, 1901. — 2 vols.: 343, 376 pp.

The last few years have seen much controversy on the subject of industrial conditions and economic theory among the Greeks. The controversy was precipitated by Bücher, whose recent studies gave

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the impression that the view originally advanced by Rodbertus was correct, and that the *oikos*, as the isolated economic unit, was characteristic of Greek life in general. Eduard Meyer rejoined that Greece, during the many centuries of its development, had gone through an economic evolution, like modern Europe, and that it had its primitive economic system based on an isolated economy, its middle ages with the growth of cities, and its completely developed organization with a capitalistic economy. Pöhlmann, in a book recently reviewed in the QUARTERLY, went still further, and maintained that all the social problems of capital and labor with which we are grappling to-day were to be found in Greece, and that the theories of Aristotle and Plato are to be explained, not as an outgrowth of, but as a reaction from, the prevalent economic conditions.

Around these views there has grown an extensive literature. It remained, however, for some one to study the question in detail and to show exactly what kind of industrial activity existed in the various parts of Greece at various periods in its history. This work has been successfully accomplished by M. Francotte, professor at the University of Liège, in two most interesting volumes. Many of the details of the book are, indeed, taken from the older works of Büchenschütz and Blümner; but these two writers collected a mass of material, without much success either in critical analysis or in careful interpretation. M. Francotte has not only utilized these German works, but has made good use of the original materials, including a large number of recent inscriptions. He is, moreover, well acquainted with the newer Italian investigations on the subject. The result is, on the whole, a more satisfactory work than that of any of his predecessors.

The author's conclusions may be summed up as follows: Meyer is undoubtedly correct in contending that Greece passed through various economic stages. M. Francotte divides Greek economic life into four epochs: first, the purely agricultural period, down to the eighth century; second, the period in which commerce and industry developed and in which the money economy was introduced, down to the sixth century; third, the period of the highest development of economic activity, down to the fourth century; and, finally, the period of decadence and material ruin, down to the second century. He gives a clear picture of the economic life of the Homeric period, and enters with great detail into the two ensuing periods. While all this is conceded, however, Professor Francotte concludes that, after all, Bücher is perfectly right in maintaining that there

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never was any such thing as the factory system in Greece, and that even the domestic system was not like that of the eighteenth century, based upon industrial capital, but that it was a system resting upon slavery and upon the preponderance of agricultural interests. In other words, M. Francotte's conclusion, although he nowhere mentions the name, is in harmony with that advanced years ago by Karl Marx. For Marx, when confronted by the fact that capital is not a modern invention, maintained that the capital which we find in classic antiquity was primarily commercial capital, and not, as in modern times, industrial capital. M. Francotte thus disposes of the contention of Pöhlmann and his followers that the social and political struggles in Greece were like those of to-day. There was, it is true, a democracy and a proletariat in some of the Greek cities, but it was not an industrial proletariat like that of modern times. Consequently, the views of Aristotle and of Xenophon must be deemed not a protest against, but a reflex of, the economic conditions of the day — a conclusion to which most of the unprejudiced students of Greek life have long since been forced.

While this forms the centre of Professor Francotte's investigations, he discusses many minor but interesting points, such as the so-called competition between slavery and free labor, the legislation on social questions, the commercial societies and professional associations, and the causes and consequences of the economic crises. Here, as elsewhere, M. Francotte's work is on a high level of scholarship — sane, thorough and careful. So far as the central point of the study is concerned, it is perhaps not too much to say that it is well calculated to dispose once and for all of this vexed question. It is to be hoped that what Francotte has done for Greece will before long be done for Rome.

EDWIN R. A. SELIGMAN.

Histoire industrielle et économique de l'Angleterre depuis les origines jusqu'à nos jours. Par GEORGES BRY, Professeur à l'Université d'Aix-Marseille, Doyen de la Faculté de Droit. Paris, Larose, 1900. — v, 771 pp.

The appearance of this fat volume is doubtless to be explained by the recent insertion of economic history among the required subjects of instruction and examination in the law faculties of the French universities. It is a mere compilation — probably, for the most part, from a small number of well-known treatises. For a very considerable portion of the field, M. Bry has followed pretty closely Mr. Gibbins's little *Industrial History of England*, taking from him

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both ideas and facts, and adopting his arrangement of them; not infrequently his text is a verbatim translation from Mr. Gibbins. Any doubt will be removed by comparing, for instance, Bry, pp. 40 *seq.*, with Gibbins, pp. 16 *seq.*, or Bry, pp. 454 *seq.*, with Gibbins, pp. 158 *seq.* The references, though numerous, are often vague; they abound in misprints; and Professor Marshall and Mr. Stubbs (the Dean apparently, not the Bishop) are made to exchange their works.

There are many indications that the learning of the footnotes is, in large measure, second, or even third, hand. In dealing with the last few decades M. Bry would seem to be more independent; and he has here been able to make use of a good many articles by French and foreign economists in the French economic journals. The American reader who is interested in seeing how English affairs strike observers on the other side of the Channel, may find that M. Bry's references in this portion of his work serve a useful purpose. But though the volume hardly calls for notice from the scientific point of view, it will serve, in default of something better, as the medium of a good deal of information to French students — most of it correct.

W. J. Ashley.

Harvard University.

The American Workman. By E. Levasseur; translated by Thomas S. Adams, Ph.D.; edited by Theodore Marburg. Baltimore, The Johns Hopkins Press, 1900. — xx, 509 pp.

The American Workman is more than a translation of *L'Ouvrier américain*. It is an abridgment, as well. Two volumes have been condensed into one, and the amount of matter has been correspondingly reduced. Yet this important fact is not noted at all on the title-page of the volume before us or in the editor's preface. It is mentioned incidentally by M. Levasseur in his letter to the translator, but this seems slight notice of the extensive alterations which the work has received at the hands of the American editor and translator.

Fifteen of the twenty-five chapters have been entirely omitted. Among the omitted chapters are those on the sweating system, the competition of immigrant, negro and convict labor, crises and the unemployed, the housing problem, poor relief, conciliation and arbitration, and socialism. With but two exceptions, the chapters translated have been taken from the economic studies which constitute Part I of the original work. Of the more sociological

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chapters of Part II, only one has been translated; and only the final chapter of Part III has been retained. In addition to this omission of entire chapters, there has been considerable abridgment of the chapters chosen for translation. In the chapter on strikes, for example, Levasseur's discussion of boycotts, picketing, blacklisting and lockouts is omitted — some eleven pages in the original. This must be regarded as unfortunate; for the doctrine of conspiracy, discussed later on and translated, centres more about these accessories of the strike than about the strike itself. On the other hand, some twenty pages of matter describing and discussing the Homestead and Pullman disturbances have been reproduced practically in full.

Many of us had hoped to see a complete translation of the original work. But if condensation was necessary, — and the publishers have a right to the final word on that point, — it is probable that the editor's work will satisfy as many of his critics in its present form as it would in any other. To abridge so good a book and one of such even merit is a thankless task, at best. The work is authorized in its present form by M. Levasseur, who has read the manuscript and has given it his unqualified approval.

Dr. Adams has succeeded in making his translation very readable, and has materially increased its value by bringing the statistics up to date. In such a work there is an immense amount of detail, and it would be surprising if no errors had been made. Some such have been noticed, but they seem to be of minor importance. For example, the table on page 36 should be headed 1845–99, not 1898. Footnote 70 (p. 37) is misplaced one line in the text. The reference to "Cogley" (p. 268) should read p. 246, instead of 264. The page reference at the end of note 32 (p. 246) has been omitted. Nearly all additions to the original are in the form of footnotes and are indicated as the work of the translator, but in some cases, without any indication of it, the translator has amplified the text itself in the interest of clearness. In one such passage the added matter contains a reference to "Trench," instead of Tench, Coxe (p. 42). It will seem strange to most readers that the following statement of Levasseur's, so plainly erroneous, should not have been corrected in the translation. "In a lecture delivered at New Haven to the students of the Wesleyan University, of Middletown, Conn., Carroll D. Wright drew a parallel," *etc.* (p. 253). There was no lecture at New Haven, and it was at a conference (Levasseur's word) at Middletown that the remarks quoted were made.

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Levasseur's work was very comprehensively reviewed for this QUARTERLY in December, 1898, by Mr. S. N. D. North, and no notice of its subject-matter seems necessary here. It is certain that *The American Workman* will be heartily welcomed by all scholars, and especially by those teachers of economics who wish some authority on the American labor problem to which they can refer their students.

FRED S. HALL.

WASHINGTON, D. C.

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BOOK NOTES.

THE issuance of a second impression, two months after the appearance of the first, of *The Awakening of the East* (New York, McClure, Phillips & Co.), by M. Pierre Leroy-Beaulieu, attests the popular interest in this work, of which Mr. Henry Norman, who contributes the preface to this English version, declares that "those who know most about the Far East will be the warmest in its praise." The work needs no extended review, since it has already taken its place as a standard authority, upon the approval of those who are best capable of estimating its merits. It is filled with information of all kinds, political, social, commercial and industrial, combining the results of patient investigation and personal observation; and yet so admirable is the arrangement, and so lucid and vivacious the style, that it may be said that there is not a dull page in it. Siberia, Japan and China are discussed in the order named, with a full appreciation of the relations of each to the general situation, so that a view at once clear and comprehensive is presented of the complicated Eastern problem. The destinies of the Celestial Empire, in which interest now chiefly centers, are, says M. Leroy-Boileau, "in a great measure in the hands of the Tsar, who has, fortunately, already given many proofs of sagacity." And he expresses the opinion that the maintenance of the Chinese government is for the moment preferable, even in the interests of the opening up of the country and the introduction of Western civilization in its immense territory, to the partition of the Empire between the various European nations. It should be stated that the volume has a satisfactory index.

In the *Anales diplomaticos y consulares de Colombia* (Bogota, Imprenta Nacional, 1900), we have the first number of a new official publication, issued under a decree of the President of Colombia, directing the establishment of a monthly review as the organ of the ministry of foreign relations. It is published under the editorship of Señor Don Antonio José Uribe, under secretary of foreign relations and professor of civil and international law in the Faculty of Bogota. The present issue, which covers the period from October to December, 1900, contains 272 pages. It comprises

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various decrees, a correspondence with the United States on a question of treaty construction, various items of information in relation to consular matters, a number of book reviews and, in an appendix, the text of the Clayton-Bulwer and Hay-Pauncefote treaties. A hundred and seventy pages are devoted to a history of the boundaries of Colombia. Many interesting subjects are announced for treatment in future issues. The first number is to be welcomed both for what it contains and for what it promises.

There is a timeliness in the publication of Ruemelin's lecture on *The Relation of Politics to the Moral Law*, translated by Rudolf Tombo, Jr. (Macmillan, 1901). Existing tendencies in national policy require just the sort of discrimination that Ruemelin made between political ethics and the ethics of private life. A sympathetic introduction to the little work and some suggestive notes are contributed by Mr. F. W. Holls, who characteristically finds that the Peace Conference at The Hague has done something to solve the problems involved in the subject. Dr. Tombo's translation is generally satisfactory; but surely Ruemelin would never have referred to the Florentine ruler to whom Machiavelli dedicated *The Prince* as a "young Medicum"!

Under the title of *English Politics in Early Virginia History* (Houghton, Mifflin & Co., 1901. — 277 pp.), Mr. Alexander Brown sums up his well-known views concerning early Virginia history. As in his earlier books, while correcting those who have followed the writings of John Smith too exclusively, he exaggerates the importance of the London Company and of the province of Virginia itself in the British colonial system. If he had studied more broadly the history of chartered companies as agents of colonization and the thirteen or more American colonies as a whole, he would doubtless have corrected some of his exaggerations and seen things in a truer perspective.

Professor Hart's admirable *American History told by Contemporaries* has now completed its third volume, entitled "National Expansion" and covering the period 1783–1845 (Macmillan, 1901). The most flattering things that have been said about the earlier volumes might be repeated, with perhaps even an accentuation of eulogy, in respect to this. Particularly dangerous pitfalls lie in the path of the editor in the period covered, but Professor Hart has been wholly successful in escaping them. Whatever may be true of other peoples and other ages, one cannot question his dictum that "the true historical knowledge of *our* past" must be based on "the actual

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conditions of common life." These conditions, and the feelings of the contemporaries about them, may be as well learned by the intelligent reader from Hart's compilation as from a dozen other works that could be mentioned.

Mr. Charles Beard's little book on *The Industrial Revolution* (London, Swan Sonnenschein, 1901. — 105 pp.), so far as the account itself is concerned, does not contain anything which has not been said at least equally as well by a number of other writers. The concluding chapter, however, on the industrial problem from the standpoint of mechanics and social needs, contains some interesting reflections on the modern trend of industry and on the crying necessity of reform. It is a book for beginners and may be safely recommended as such. Professor York Powell has provided it with a preface.

Another evidence of the growing interest in the economic history of France is presented by the book of M. Camille Bloch, in charge of the archives of the Department of the Loire, who has published a series of studies on the close of the eighteenth century, under the title *Études sur l'histoire économique de la France*, 1760–1789 (Paris, Picard, 1900. — 269 pp.). M. Bloch deals with a number of subjects, such as the corn trade, the distribution of landed property at the outbreak of the Revolution, the economic character of the municipal assemblies of 1787, the Cahiers of Orleans from the economic point of view and the treaty of commerce of 1786. All of these essays, with the exception of the last, treat primarily of local conditions in Orleans. It is only through such local studies of limited periods, however, that we can ever hope to secure an accurate view of general conditions as a basis for broader generalizations. M. Bloch has the usual French gift of being able to present his views clearly and readably. The work has an introduction by Professor Levasseur.

Some time ago we noticed the first volume of a collection of documents relating to the industrial and commercial history of France, by M. Gustave Fagniez. The second volume has now been published, under the same general title, *Documents relatifs à l'histoire de l'industrie et du commerce en France* (Paris, Picard, 1900. — 345 pp.). This volume deals with the fourteenth and fifteenth centuries and, like its predecessor, is accompanied by an introduction and a glossary of technical terms. M. Fagniez divides the subject into three periods: the first covering the reign of Philip the Good to the Hundred Years' War; the second from the Hundred Years'

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War to the expulsion of the English; and the third down to the beginning of the reign of Charles XII. The documents comprise a large variety of subjects, including numerous details of the guild system and of the commercial usages from almost every part of France during the period covered. As very few of these have ever been published before, they will be of great use to the student of French economic history.

Students of primitive institutions will find no better introduction to the fruitful investigations of recent years in the rich field of Roman religion than *The Roman Festivals of the Period of the Republic*, by W. Warde Fowler, of Lincoln College, Oxford (London and New York, The Macmillan Company, 1899. — ix, 373 pp.). In form the book is a commentary on the *Fasti* of Ovid. After an introduction and a preliminary discussion of the Calendar, the chapters successively take up in detailed and critical exposition the festivals of each month, beginning with March and ending with February. The book is a work of careful scholarship throughout and cannot be neglected by any student of social origins.

The history of economic thought in classic Rome has hitherto been treated with scant courtesy. An effort to repair the omission has been made by E. Masé-Dari, in an Italian work entitled *M. Tullius Cicero e le sue idee sociale ed economiche* (Turino, Fratelli Bocca, 1901. — 390 pp.). Although ostensibly devoted to the economic ideas of Cicero, which are laboriously collected and arranged from his various writings, the book deals incidentally with the general economic views which were prevalent in the Roman society of the time. It throws an interesting light on the public works, the agrarian laws, the fiscal system of the publicans, and the general problems of agriculture and industrial wealth in the Rome of Cicero's day.

A new edition of Thomas Kirkup's well-known *History of Socialism* (London, Adam and Charles Black, 1900. — viii, 364 pp.) brings the work practically down to our own time. A special chapter on the German social democracy is almost entirely new. Such modification as Mr. Kirkup has made in his views since the work in substance was published in the ninth edition of the *Encyclopædia Britannica* are, as might have been expected, rather in the direction of cautious and scholarly criticism than of partisanship in any sense of the word.

The split in the Social-Democratic party in Germany is becoming more and more accentuated. Under the leadership of Bernstein, who

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still lives in England and who has been much influenced by British conditions, there is a large and growing section whose views are practically those of the Fabian, rather than of the Marxian, Socialists. Eduard Bernstein has now supplemented his work of two or three years ago, in which he first voiced this reaction, by a collection of essays on the history and theory of socialism, under the title *Zur Geschichte und Theorie des Socialismus* (Berlin, Edelheim, 1901. — 426 pp.). Most of these essays have been written during the past few years and they deal with pretty much all the problems, theoretical and practical, of the Social-Democratic party. Several changes have been made in the earlier essays, so that they now represent the Bernstein of to-day, not the militant Bernstein of a decade ago. These changes — mainly omissions — have called down on the author the denunciation of his former collaborators on the *Neue Zeit*, the chief scientific organ of socialism. A third portion of the book contains a series of replies to the attacks upon his position by the orthodox Marxians.

Prof. Arthur Fairbanks's excellent *Introduction to Sociology* appears in a third edition (New York, Charles Scribner's Sons, 1901. — xvii, 307 pp.), revised and in part rewritten, and in a smaller form. The changes have been made with a view to simplicity and clearness for class use, and one additional chapter has been written. The book is practical in aim and does not profess to present a system of social science.

Among the best of the many books which examine the phenomena of crime from new points of view, sociological as well as physical and psychological, is a stout volume, *Des Principes sociologiques de la criminologie*, by Raoul de la Grasserie (Paris, V. Giard and E. Briere, 1901. — 442 pp.). The work is systematic, taking up first the conceptions and subdivision of criminology, and proceeding then, through a detailed analysis of pathological mental and moral conditions, to an examination of the conditions in which these find expression in criminal acts. The author next probes deeper into the causes of crime and then examines with much care the various theories and methods of repression. Finally, he attempts the most complex problems of all, those of the interaction of society and the criminal elements in its composition. That crime, like war, is an evil which sometimes promotes social good in the long run, is a thesis which has been more than once defended; and M. Raoul de la Grasserie's defense of it is happily devoid of any kind of sensationalism or paradox. An especially admirable feature of the

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work is the plea for the victims of criminal acts, for whom society has as yet provided inadequate means of redress. Dr. Cesare Lombroso writes an introduction.

The *Précis de sociologie*, by G. Palante (Paris, Felix Alcan, 1901. — 186 pp.), is a convenient summary of the views of the best known theoretical writers on sociology and a reëxamination by the author of the more important theoretical questions. His five books are devoted respectively to "Definition, Method and Partition," the "Formation of Societies," the "Conservation of Societies," the "Evolution of Societies" and the "Dissolution of Societies."

The fourth volume, for the years 1899–1900, of *L'Année sociologique*, edited by Prof. Émile Durkheim of the University of Bordeaux, contains three original memoirs: namely, "Remarques sur le régime des castes," by M. C. Bougle; "Deux lois de l'évolution pénale," by M. Durkheim; and "Les causes d'extinction de la propriété corporative," by Professor Charmont. These occupy one hundred and five of the six hundred and sixteen pages. The remainder of the volume is made up, as usual, of analyses of sociological works published during the year, distributed under the titles "General Sociology, Religious, Moral and Juristic"; "Criminological and Economic Sociology"; "Social Morphology," and "Miscellaneous." The work is indispensable to students who wish to keep informed upon the literature of the subject.

In his *Salaires et misères de femmes* (Calman Levy, 1900. — xxxiii, 312 pp.), Comte d'Haussonville expresses himself as not in sympathy with the *féministes* who are agitating France. While favoring certain of their aims, he brings against them the charge of having sacrificed the real interests of the mass of French working women, by diverting public attention from much needed reforms in the Penal and the Civil Code to the extension of educational and political privileges whose importance is limited to a small number of upper class women. The purpose of this work is practical. It is to give a clear and somewhat popular exposition of the economic and social conditions surrounding the French working-girl, of the success of the various philanthropic experiments made on her behalf, and of the lines along which further charitable movements can profitably extend. Comte d'Haussonville has succeeded in his purpose. To the economic student, interested primarily in questions of wages, hours of labor, regularity of employment and the like, the book adds nothing to the more detailed study of M. Jules Simon or to the recent works of M. Paul Leroy Beaulieu and M. Charles

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Benoist; but it is of value to the philanthropist and to the general reader. The establishment of restaurants under the control of philanthropic societies, the maintenance of working-girls' homes and the organization of mutual aid societies are discussed somewhat fully, though in all cases the treatment is descriptive, rather than statistical.

The Doubleday-McClure Company have completed their edition of Henry George's works by the volume on *Our Land and Land Policy*, which reprints the famous essay, originally published in 1871, containing his earliest thoughts on the land problem. The volume includes a number of other essays, lectures and speeches, which have not hitherto appeared in book form. The same firm has also supplemented the complete set of his writings by *The Life of Henry George*, by his son, Henry George, Jr. Whether or no we agree with his fundamental philosophy, all are now willing to acknowledge his remarkable powers as a writer and an orator and his high qualities as a man. Although the biography is far from what it ought to be and is entirely lacking in perspective, it gives a vivid picture of a life filled with picturesque episodes. While many of the latter-day details are still fresh in the memory of all, the complete record of such an eventful career cannot fail to interest friend and foe alike.

The growing interest in the study of economic geography is perhaps partly responsible for two works by M. Henri Lecomte, the one on coffee and the other on cotton, under the titles of *Le café: culture, manipulation, production*, and *Le coton: monographie, culture, histoire économique* (Paris, Carré et Naud. — 335 and 494 pp.). The volume on cotton is divided into two parts, one comprising the conditions of production throughout the world, the second giving a bird's-eye view of the industry. This book was crowned by the Academy of Moral and Political Science, and received the medal of the Society for the Study of Commercial Geography. The volume on coffee necessarily deals much more fully with botanical and agronomical considerations; but here also a large part of the book is devoted to the economic problems of production, trade and consumption. M. Lecomte has made good use of the French and German literature on both subjects, and his works are worthy successors of his earlier books on cocoa and India rubber.

It has taken some little courage for Mr. Ernest Edwin Williams, Fellow of the Royal Statistical Society, to publish *The Case for Protection* (London, Grant Richards, 1899. — 296 pp.). It is an

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out-and-out plea for a return by England to the restrictive policy. Mr. Richards has, indeed, a not very difficult task in showing that England's commercial growth during the eighteenth century and the beginning of the nineteenth was largely due to protection, and he is likewise on no very insecure ground in claiming that the free-trade policy has practically ruined English agriculture. Nor is he much less unsuccessful in his attempt to overturn some of the extreme arguments of Professors Fawcett and Bastable. But Mr. Williams will find few to agree with him in believing that he has in this way made out his case. While he lays much stress upon the historical perspective, he is not willing to confess that the whole system of commercial restraints ever outlives its usefulness. Nevertheless, although he is such an ardent advocate of protection, he does not believe that there is any probability that England will reverse her policy at once; and in a concluding chapter on practical protection he seeks to outline a plan whereby England may again gradually put herself in what he considers to be the right path. Mr. Williams's book, while it will not convince many students as to the policy of the future, contains some statements and illustrations as to the past which are worthy of attention.

After ten years we have a second edition, revised and enlarged by one fourth, of Professor Dunbar's *Chapters on the Theory and History of Banking* (New York, G. P. Putnam's Sons, 1901. — x, 252 pp.). The revision was planned and partly carried out by the author, but after his death in January, 1900, the work was finished by one of his former students, Dr. O. M. W. Sprague. Aside from a few minor changes in matters of detail, most of the original book is reprinted *verbatim*, although the author has expanded somewhat his account of the legislation upon banking currency during the Civil War. There are, moreover, considerable additions to the chapters which deal with the Bank of France, the national banks of the United States, the Bank of England and the Reichsbank, bringing the record of the development of these institutions down to date. As the banking history of each of the countries concerned during the last decade has included specially noteworthy events, — such as the renewal, with alterations, of the charters of the Bank of France and the Reichsbank; the assumption by the Bank of England of extra-legal responsibilities in connection with the Baring failure; and the modification of our national banking system, — these additions were needed. Besides this, Professor Dunbar inserted a new chapter on "Redemption," wherein he considered, with his usual carefulness

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and reserve, the difference between the circulation of bank notes and that of checks and the arguments for and against enforced daily redemption. This chapter is so suggestive that every teacher will regret that the author was not able to carry out his plan for including several others in this revised edition. As the book now stands, the first seven chapters, with the tenth, present the clearest and most useful exposition we have of banking principles, with special reference to conditions in the United States; and the remaining chapters give the best available outline of the history of the other leading banking systems.

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